

Senate Engrossed House Bill

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
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CHAPTER 247

HOUSE BILL 2806

AN ACT

AMENDING SECTION 6-246, ARIZONA REVISED STATUTES; REPEALING SECTION 14-1108, ARIZONA REVISED STATUTES; AMENDING SECTIONS 14-1201 AND 14-1403, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 1, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 14-1404, 14-1405, 14-1406, 14-1407 AND 14-1408; AMENDING SECTIONS 14-2901, 14-2905, 14-3703, 14-3913, 14-3933, 14-5417, 14-5419 AND 14-5603, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 5, ARTICLE 7, ARIZONA REVISED STATUTES, BY ADDING SECTION 14-5652; REPEALING TITLE 14, CHAPTER 7, ARTICLES 2, 2.1, 3, 6 AND 8, ARIZONA REVISED STATUTES; AMENDING TITLE 14, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 11; AMENDING SECTION 46-456, ARIZONA REVISED STATUTES; RELATING TO THE ARIZONA TRUST CODE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 6-246, Arizona Revised Statutes, is amended to
3 read:

4 6-246. Permitted investments; limitations

5 A. In addition to other investments authorized by law, a bank or trust
6 company that is acting as a fiduciary may invest and reinvest in the
7 securities of an open-end or closed-end management investment company or
8 investment trust that is registered under the investment company act of 1940
9 (15 United States Code section 80A-1), as amended, if the portfolios of that
10 investment company or investment trust consist of investments permitted by
11 the applicable fiduciary instrument. A bank or trust company may invest in
12 these securities notwithstanding that the bank or trust company, or an
13 affiliate of the bank or trust company, provides services to the investment
14 company or investment trust as an investment adviser, custodian, transfer
15 agent, registrar, sponsor, distributor, administrator, manager or otherwise
16 and receives reasonable remuneration for those services.

17 B. A bank or trust company that invests and reinvests in the
18 securities of an open-end or closed-end management investment company or
19 investment trust authorized under subsection A of this section shall disclose
20 in the statement of the fiduciary account to all persons whose funds are
21 invested in the investment company or investment trust that the bank or trust
22 company provides services for and receives fees from the open-end or
23 closed-end management company or investment trust. A PERSON WHO COMPLIES
24 WITH THE REQUIREMENTS OF SECTION 14-10802, SUBSECTION F SATISFIES THE
25 DISCLOSURE REQUIREMENTS OF THIS SUBSECTION.

26 C. A bank may purchase for its own account any class of equity
27 securities issued by a banker's bank, as defined in section 6-204, if the
28 aggregate investment does not exceed ten per cent of the bank's capital.

29 Sec. 2. Repeal

30 Section 14-1108, Arizona Revised Statutes, is repealed.

31 Sec. 3. Section 14-1201, Arizona Revised Statutes, is amended to read:

32 14-1201. Definitions

33 In this title, unless the context otherwise requires:

34 1. "Agent" includes an attorney-in-fact under a durable or nondurable
35 power of attorney, a person who is authorized to make decisions concerning
36 another person's health care and a person who is authorized to make decisions
37 for another person under a natural death act.

38 2. "Application" means a written request to the registrar for an order
39 of informal probate or appointment under chapter 3, article 3 of this title.

40 3. "Beneficiary", as it relates to a trust beneficiary, includes a
41 person who has any present or future interest, vested or contingent, and also
42 includes the owner of an interest by assignment or other transfer. As it
43 relates to a charitable trust, beneficiary includes any person entitled to
44 enforce the trust. As it relates to a beneficiary of a beneficiary
45 designation, beneficiary refers to a beneficiary of an insurance or annuity

1 policy, an account with pay on death designation, a security registered in
2 beneficiary form or a pension, profit sharing, retirement or similar benefit
3 plan, or any other nonprobate transfer at death. As it relates to a
4 beneficiary designated in a governing instrument, beneficiary includes a
5 grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a
6 beneficiary designation, a donee, appointee or taker in default of a power of
7 appointment and a person in whose favor a power of attorney or a power held
8 in any person, fiduciary or representative capacity is exercised.

9 4. "Beneficiary designation" refers to a governing instrument naming a
10 beneficiary of an insurance or annuity policy, of an account with pay on
11 death designation, of a security registered in beneficiary form or of a
12 pension, profit sharing, retirement or similar benefit plan, or any other
13 nonprobate transfer at death.

14 5. "Child" includes a person who is entitled to take as a child under
15 this title by intestate succession from the parent whose relationship is
16 involved. Child excludes a person who is only a stepchild, a foster child, a
17 grandchild or a more remote descendant.

18 6. "Claims", in respect to estates of decedents and protected persons,
19 includes liabilities of the decedent or the protected person, whether arising
20 in contract, in tort or otherwise, and liabilities of the estate that arise
21 at or after the death of the decedent or after the appointment of a
22 conservator, including funeral expenses and expenses of administration.
23 Claims does DO not include estate or inheritance taxes or demands or disputes
24 regarding title of a decedent or a protected person to specific assets
25 alleged to be included in the estate.

26 7. "Community property" means that property of a husband and wife that
27 is acquired during the marriage and that is community property as prescribed
28 in section 25-211.

29 8. "Conservator" means a person who is appointed by a court to manage
30 the estate of a protected person.

31 9. "Court" means the superior court.

32 10. "Dependent child" means a minor child who the decedent was
33 obligated to support or an adult child who was in fact being supported by the
34 decedent at the time of the decedent's death.

35 11. "Descendant" means all of the decedent's descendants of all
36 generations, with the relationship of parent and child at each generation.

37 12. "Devise", when used as a noun, means a testamentary disposition of
38 real or personal property and, when used as a verb, means to dispose of real
39 or personal property by will.

40 13. "Devisee" means a person designated in a will to receive a devise.
41 For the purposes of chapter 3 of this title, in the case of a devise to an
42 existing trust or trustee, or to a trustee on trust described by will, the
43 trust or trustee is the devisee and the beneficiaries are not devisees.

44 14. "Disability" means cause for a protective order as described in
45 section 14-5401.

1 15. "Distributee" means any person who has received property of a
2 decedent from that person's personal representative other than as a creditor
3 or purchaser. Distributee includes a testamentary trustee only to the extent
4 of distributed assets or increment that remains in that person's hands. A
5 beneficiary of a testamentary trust to whom the trustee has distributed
6 property received from a personal representative is a distributee of the
7 personal representative. For the purposes of this paragraph, "testamentary
8 trustee" includes a trustee to whom assets are transferred by will, to the
9 extent of the devised assets.

10 16. "Estate" includes the property of the decedent, trust or other
11 person whose affairs are subject to this title as originally constituted and
12 as it exists from time to time during administration. As it relates to a
13 spouse, the estate includes only the separate property and the share of the
14 community property belonging to the decedent or person whose affairs are
15 subject to this title.

16 17. "Exempt property" means that property of a decedent's estate that
17 is described in section 14-2403.

18 18. "Fiduciary" includes a personal representative, guardian,
19 conservator and trustee.

20 19. "Foreign personal representative" means a personal representative
21 appointed by another jurisdiction.

22 20. "Formal proceedings" means proceedings conducted before a judge
23 with notice to interested persons.

24 21. "Governing instrument" means a deed, will, trust, insurance or
25 annuity policy, account with pay on death designation, security registered in
26 beneficiary form, pension, profit sharing, retirement or similar benefit
27 plan, instrument creating or exercising a power of appointment or a power of
28 attorney or a dispositive, appointive or nominative instrument of any similar
29 type.

30 22. "Guardian" means a person who has qualified as a guardian of a
31 minor or incapacitated person pursuant to testamentary or court appointment
32 but excludes a person who is merely a guardian ad litem.

33 23. "Heirs", except as controlled by section 14-2711, means persons,
34 including the surviving spouse and the state, who are entitled under the
35 statutes of intestate succession to the property of a decedent.

36 24. "Incapacitated person" has the same meaning as prescribed in
37 section 14-5101.

38 25. "Informal proceedings" means those proceedings conducted without
39 notice to interested persons by an officer of the court acting as a registrar
40 for probate of a will or appointment of a personal representative.

41 26. "Interested person" includes any TRUSTEE, heir, devisee, child,
42 spouse, creditor, beneficiary and other person who has a property right in or
43 claim against a trust estate or the estate of a decedent, ward or protected
44 person. Interested person also includes a person who has priority for
45 appointment as personal representative and other fiduciaries representing

1 interested persons. Interested person, as the term relates to particular
2 persons, may vary from time to time and must be determined according to the
3 particular purposes of, and matter involved in, any proceeding.

4 27. "Issue" of a person means descendant as defined in ~~paragraph 11 of~~
5 this section.

6 28. "Joint tenants with the right of survivorship" and "community
7 property with the right of survivorship" includes co-owners of property held
8 under circumstances that entitle one or more to the whole of the property on
9 the death of the other or others but excludes forms of co-ownership
10 registration in which the underlying ownership of each party is in proportion
11 to that party's contribution.

12 29. "Lease" includes any oil, gas or other mineral lease.

13 30. "Letters" includes letters testamentary, letters of guardianship,
14 letters of administration and letters of conservatorship.

15 31. "Minor" means a person who is under eighteen years of age.

16 32. "Mortgage" means any conveyance, agreement or arrangement in which
17 property is encumbered or used as security. MORTGAGE DOES NOT INCLUDE LEASES
18 OR EASEMENTS.

19 33. "Nonresident decedent" means a decedent who was domiciled in
20 another jurisdiction at the time of the decedent's death.

21 34. "Organization" means a corporation, LIMITED LIABILITY COMPANY,
22 business trust, estate, trust, partnership, joint venture, association,
23 government or governmental subdivision or agency or any other legal or
24 commercial entity.

25 35. "Parent" includes any person entitled to take, or who would be
26 entitled to take if the child died without a will, as a parent under this
27 title by intestate succession from the child whose relationship is in
28 question and excludes any person who is only a stepparent, foster parent or
29 grandparent.

30 36. "Payor" means a trustee, insurer, business entity, employer,
31 government, governmental agency or subdivision or any other person who is
32 authorized or obligated by law or a governing instrument to make payments.

33 37. "Person" means a person or an organization.

34 38. "Personal representative" includes executor, administrator,
35 successor personal representative, special administrator and persons who
36 perform substantially the same function under the law governing their status.
37 A general personal representative excludes a special administrator.

38 39. "Petition" means a written request to the court for an order after
39 notice.

40 40. "Proceeding" includes action at law and suit in equity.

41 ~~41. "Property" includes both real and personal property or any interest~~
42 ~~in real and personal property and means anything that may be the subject of~~
43 ~~ownership. HAS THE SAME MEANING PRESCRIBED IN SECTION 14-10103.~~

44 42. "Protected person" has the same meaning as prescribed in section
45 14-5101.

1 43. "Protective proceeding" has the same meaning as prescribed in
2 section 14-5101.

3 44. "Registrar" means the official of the court designated to perform
4 the functions of registrar as provided in section 14-1307.

5 45. "Security" includes any note, stock, treasury stock, bond,
6 debenture, evidence of indebtedness, certificate of interest or participation
7 in an oil, gas or mining title or lease or in payments out of production
8 under that title or lease, collateral trust certificate, transferable share,
9 OR voting trust certificate and, in general, includes any interest or
10 instrument commonly known as a security, or any certificate of interest or
11 participation, any temporary or interim certificate, receipt or certificate
12 of deposit for, or any warrant or right to subscribe to or purchase, any of
13 these securities.

14 46. "Separate property" means that property of a husband or wife which
15 THAT is ~~his or her~~ THE SPOUSE'S separate property as defined in section
16 25-213.

17 47. "Settlement", in reference to a decedent's estate, includes the
18 full process of administration, distribution and closing.

19 48. "Special administrator" means a personal representative as
20 described by sections 14-3614 through 14-3618.

21 49. ~~"State" means a state, district, territory, possession or~~
22 ~~commonwealth of the United States~~ HAS THE SAME MEANING PRESCRIBED IN SECTION
23 14-10103.

24 50. "Successor personal representative" means a personal
25 representative, other than a special administrator, who is appointed to
26 succeed a previously appointed personal representative.

27 51. "Successors" means persons, other than creditors, who are entitled
28 to property of a decedent under a will or this title.

29 52. "Supervised administration" refers to the proceedings described in
30 chapter 3, article 5 of this title.

31 53. "Survive" means that a person has neither predeceased an event,
32 including the death of another person, nor is deemed to have predeceased an
33 event under section 14-2104 or 14-2702.

34 54. "Testacy proceeding" means a proceeding to establish a will or
35 determine intestacy.

36 55. "Testator" includes a person of either sex.

37 56. "Trust" includes an express trust, private or charitable, with any
38 additions, wherever and however created. Trust also includes a trust created
39 or determined by judgment or decree under which the trust is to be
40 administered in the manner of an express trust. Trust excludes other
41 constructive trusts and excludes resulting trusts, conservatorship, personal
42 representatives, trust accounts, custodial arrangements pursuant to chapter
43 7, article 7 of this title, business trusts providing for certificates to be
44 issued to beneficiaries, common trust funds, voting trusts, security
45 arrangements, liquidation trusts and trusts for the primary purpose of paying

1 debts, dividends, interest, salaries, wages, profits, pensions or employee
2 benefits of any kind, TRUSTS CREATED BY A CITY OR TOWN FOR THE PAYMENT OF
3 MEDICAL INSURANCE, HEALTH CARE BENEFITS OR EXPENSES, LONG-TERM OR SHORT-TERM
4 DISABILITY, SELF INSURANCE RESERVES AND SIMILAR PROGRAMS ADMINISTERED BY A
5 CITY OR TOWN and any arrangement under which a person is nominee or escrowee
6 for another.

7 57. "Trustee" includes an original, additional or successor trustee,
8 whether or not appointed or confirmed by court.

9 58. "Ward" has the same meaning as prescribed in section 14-5101.

10 59. "Will" includes A codicil and any testamentary instrument that
11 merely appoints an executor, revokes or revises another will, nominates a
12 guardian or expressly excludes or limits the right of an individual or class
13 to succeed to property of the decedent passing by intestate succession.

14 Sec. 4. Section 14-1403, Arizona Revised Statutes, is amended to read:

15 14-1403. Pleadings

16 In formal proceedings involving trusts or estates of decedents, minors,
17 protected persons or incapacitated persons, and ~~in judicially supervised~~
18 ~~settlements, the following apply:~~

19 1. ~~interests to be affected shall~~ MUST be described in pleadings which
20 THAT give reasonable information to owners by name or class, by reference to
21 the instrument creating the interests or in SOME other appropriate manner.

22 2. ~~Persons are bound by orders binding others in the following cases:~~

23 (a) ~~Orders binding the sole holder or all co-holders of a power of~~
24 ~~revocation or a presently exercisable general power of appointment, including~~
25 ~~one in the form of a power of amendment, bind other persons to the extent~~
26 ~~their interests, as objects, takers in default or otherwise, are subject to~~
27 ~~the power.~~

28 (b) ~~To the extent there is no conflict of interest between them or~~
29 ~~among persons represented:~~

30 (i) ~~Orders binding a conservator bind the person whose estate he~~
31 ~~controls.~~

32 (ii) ~~Orders binding a guardian bind the ward if no conservator of his~~
33 ~~estate has been appointed.~~

34 (iii) ~~Orders binding a trustee bind beneficiaries of the trust in~~
35 ~~proceedings to probate a will establishing or adding to a trust, to review~~
36 ~~the acts or accounts of a prior fiduciary and in proceedings involving~~
37 ~~creditors or other third parties.~~

38 (iv) ~~Orders binding a personal representative bind persons interested~~
39 ~~in the undistributed assets of a decedent's estate in actions or proceedings~~
40 ~~by or against the estate. If there is no conflict of interest and no~~
41 ~~conservator or guardian has been appointed, a parent may represent his minor~~
42 ~~child.~~

43 (c) ~~An unborn or unascertained person who is not otherwise represented~~
44 ~~is bound by an order to the extent his interest is adequately represented by~~
45 ~~another party having a substantially identical interest in the proceeding.~~

1 ~~3. Notice is required as follows:~~

2 ~~(a) Notice as prescribed by section 14-1401 shall be given to every~~
3 ~~interested person or to one who can bind an interested person as described in~~
4 ~~paragraph 2, subdivision (a) or (b) of this section. Notice may be given~~
5 ~~both to a person and to another who may bind him.~~

6 ~~(b) Notice is given to unborn or unascertained persons who are not~~
7 ~~represented under paragraph 2, subdivision (a) or (b) of this section, by~~
8 ~~giving notice to all known persons whose interests in the proceedings are~~
9 ~~substantially identical to those of the unborn or unascertained persons.~~

10 ~~4. At any point in a proceeding, a court may appoint a guardian ad~~
11 ~~litem to represent the interest of a minor, an incapacitated, unborn or~~
12 ~~unascertained person, or a person whose identity or address is unknown, if~~
13 ~~the court determines that representation of the interest otherwise would be~~
14 ~~inadequate. If not precluded by conflict of interests, a guardian ad litem~~
15 ~~may be appointed to represent several persons or interests. The court shall~~
16 ~~set out its reasons for appointing a guardian ad litem as a part of the~~
17 ~~record of the proceeding.~~

18 Sec. 5. Title 14, chapter 1, article 4, Arizona Revised Statutes, is
19 amended by adding sections 14-1404 through 14-1408, to read:

20 14-1404. Representation; basic effect

21 A. NOTICE TO A PERSON WHO MAY REPRESENT AND BIND ANOTHER PERSON UNDER
22 THIS ARTICLE HAS THE SAME EFFECT AS IF NOTICE WERE GIVEN DIRECTLY TO THE
23 OTHER PERSON.

24 B. EXCEPT AS OTHERWISE PROVIDED IN SECTION 14-10602, SUBSECTION E, A
25 PERSON WHO UNDER THIS ARTICLE MAY REPRESENT A SETTLOR WHO LACKS CAPACITY MAY
26 RECEIVE NOTICE AND GIVE A BINDING CONSENT ON THE SETTLOR'S BEHALF. THE
27 CONSENT OF A PERSON WHO MAY REPRESENT AND BIND ANOTHER PERSON UNDER THIS
28 ARTICLE IS BINDING ON THE PERSON REPRESENTED UNLESS THE PERSON REPRESENTED
29 OBJECTS TO THE REPRESENTATION BEFORE THE CONSENT WOULD OTHERWISE HAVE BECOME
30 EFFECTIVE.

31 C. FOR THE PURPOSES OF THIS SECTION, NOTICE TO A PERSON MUST INCLUDE
32 ANY DOCUMENT REQUIRED TO BE SENT TO A PERSON PURSUANT TO THIS ARTICLE.

33 D. A PERSON WHO RECEIVES NOTICE ON BEHALF OF ANOTHER PERSON PURSUANT
34 TO THIS SECTION IS NOT LIABLE TO THE OTHER PERSON UNLESS THE PERSON WHO
35 RECEIVES NOTICE IS GROSSLY NEGLIGENT OR ACTS OR FAILS TO ACT WITH THE INTENT
36 TO HARM THE OTHER PERSON.

37 14-1405. Representation by holder of general power of appointment

38 THE HOLDER OF A GENERAL POWER OF APPOINTMENT, INCLUDING A GENERAL
39 TESTAMENTARY POWER OF APPOINTMENT, MAY REPRESENT AND BIND PERSONS WHOSE
40 INTERESTS, AS PERMISSIBLE APPOINTEES, TAKERS IN DEFAULT OR OTHERWISE, ARE
41 SUBJECT TO THE POWER.

42 14-1406. Representation by fiduciaries and parents

43 TO THE EXTENT THERE IS NO MATERIAL CONFLICT OF INTEREST BETWEEN THE
44 REPRESENTATIVE AND THE PERSON REPRESENTED OR AMONG THOSE BEING REPRESENTED
45 WITH RESPECT TO A PARTICULAR QUESTION OR DISPUTE:

1 1. A CONSERVATOR MAY REPRESENT AND BIND THE ESTATE THAT THE
2 CONSERVATOR CONTROLS.

3 2. A GUARDIAN MAY REPRESENT AND BIND THE WARD IF A CONSERVATOR OF THE
4 WARD'S ESTATE HAS NOT BEEN APPOINTED.

5 3. AN AGENT WHO HAS AUTHORITY TO ACT WITH RESPECT TO THE PARTICULAR
6 QUESTION OR DISPUTE MAY REPRESENT AND BIND THE PRINCIPAL.

7 4. A TRUSTEE MAY REPRESENT AND BIND THE BENEFICIARIES OF THE TRUST.

8 5. A PERSONAL REPRESENTATIVE OF A DECEDENT'S ESTATE MAY REPRESENT AND
9 BIND PERSONS INTERESTED IN THE ESTATE.

10 6. A PARENT MAY REPRESENT AND BIND THE PARENT'S MINOR OR UNBORN CHILD
11 IF A CONSERVATOR OR GUARDIAN FOR THE CHILD HAS NOT BEEN APPOINTED, EXCEPT
12 THAT THE PARENT MAY NOT REPRESENT THE CHILD TO CONSENT TO A MODIFICATION OR A
13 TERMINATION OF A TRUST IF THE PARENT IS THE SETTLOR OF THE TRUST.

14 14-1407. Representation by person having substantially
15 identical interest

16 UNLESS OTHERWISE REPRESENTED, A MINOR, INCAPACITATED PERSON, UNBORN
17 CHILD OR PERSON WHOSE IDENTITY OR LOCATION IS UNKNOWN AND NOT REASONABLY
18 ASCERTAINABLE MAY BE REPRESENTED BY AND BOUND BY ANOTHER PERSON WHO HAS A
19 SUBSTANTIALLY IDENTICAL INTEREST WITH RESPECT TO THE PARTICULAR QUESTION OR
20 DISPUTE, BUT ONLY TO THE EXTENT THERE IS NO MATERIAL CONFLICT OF INTEREST
21 BETWEEN THE REPRESENTATIVE AND THE PERSON REPRESENTED WITH RESPECT TO THE
22 PARTICULAR QUESTION OR DISPUTE.

23 14-1408. Appointment of representative

24 A. IF THE COURT DETERMINES THAT AN INTEREST IS NOT REPRESENTED UNDER
25 THIS ARTICLE OR THAT THE OTHERWISE AVAILABLE REPRESENTATION MIGHT BE
26 INADEQUATE, THE COURT MAY APPOINT A REPRESENTATIVE TO RECEIVE NOTICE, GIVE
27 CONSENT AND OTHERWISE REPRESENT, BIND AND ACT ON BEHALF OF A MINOR,
28 INCAPACITATED PERSON, UNBORN CHILD OR PERSON WHOSE IDENTITY OR LOCATION IS
29 UNKNOWN. THE COURT MAY APPOINT A REPRESENTATIVE FOR SEVERAL PERSONS OR
30 INTERESTS.

31 B. A REPRESENTATIVE MAY ACT ON BEHALF OF THE PERSON REPRESENTED WITH
32 RESPECT TO ANY MATTER ARISING UNDER THIS TITLE, WHETHER OR NOT A JUDICIAL
33 PROCEEDING CONCERNING THE TRUST OR ESTATE IS PENDING.

34 C. IN MAKING DECISIONS, A REPRESENTATIVE MAY CONSIDER GENERAL BENEFIT
35 ACCRUING TO THE LIVING MEMBERS OF THE FAMILY OF THE PERSON REPRESENTED.

36 Sec. 6. Section 14-2901, Arizona Revised Statutes, is amended to read:

37 14-2901. Nonvested property interest; general power of
38 appointment; validity; exception

39 A. A nonvested property interest is invalid unless at least one of the
40 following is true:

41 1. At the time the interest is created it is certain to vest or to
42 terminate not later than twenty-one years after the death of a person who is
43 then alive.

44 2. The interest either vests or terminates within ~~ninety~~ FIVE HUNDRED
45 years after its creation.

1 3. The interest is under a trust whose trustee has the expressed or
2 implied power to sell the trust assets and at one or more times after the
3 creation of the interest one or more persons who are living when the trust is
4 created have an unlimited power to terminate the interest.

5 B. A general power of appointment that is not presently exercisable
6 because of a condition precedent is invalid unless ANY the following is true:

7 1. At the time the power is created the condition precedent is certain
8 to be satisfied or becomes impossible to satisfy no later than twenty-one
9 years after the death of a person who is then alive.

10 2. The condition precedent either is satisfied or becomes impossible
11 to satisfy within ~~ninety~~ FIVE HUNDRED years after its creation.

12 3. THE POWER IS WITH RESPECT TO AN INTEREST UNDER A TRUST WHOSE
13 TRUSTEE HAS THE EXPRESSED OR IMPLIED POWER TO SELL THE TRUST ASSETS AND AT
14 ONE OR MORE TIMES AFTER THE CREATION OF THE INTEREST ONE OR MORE PERSONS WHO
15 ARE LIVING WHEN THE TRUST IS CREATED HAVE AN UNLIMITED POWER TO TERMINATE THE
16 INTEREST.

17 C. A nongeneral power of appointment or a general testamentary power
18 of appointment is invalid unless AT LEAST ONE OF THE FOLLOWING IS TRUE:

19 1. At the time the power is created it is certain to be irrevocably
20 exercised or otherwise to terminate not later than twenty-one years after the
21 death of a person who is then alive.

22 2. The power is irrevocably exercised or otherwise terminates within
23 ~~ninety~~ FIVE HUNDRED years after its creation.

24 3. THE POWER IS WITH RESPECT TO AN INTEREST UNDER A TRUST WHOSE
25 TRUSTEE HAS THE EXPRESSED OR IMPLIED POWER TO SELL THE TRUST ASSETS AND AT
26 ONE OR MORE TIMES AFTER THE CREATION OF THE INTEREST ONE OR MORE PERSONS WHO
27 ARE LIVING WHEN THE TRUST IS CREATED HAVE AN UNLIMITED POWER TO TERMINATE THE
28 INTEREST.

29 D. In determining whether a nonvested property interest or a power of
30 appointment is valid under subsection A, paragraph 1, subsection B, paragraph
31 1 or subsection C, paragraph 1, the possibility that a child will be born to
32 a person after that person's death is disregarded.

33 E. If the governing ~~instrument's language~~ INSTRUMENT seeks to do
34 either of the following ~~on the later of either the expiration of a period of~~
35 ~~time that does not exceed twenty one years after the death of the survivor of~~
36 ~~a specific person who was alive when the trust or other property arrangement~~
37 ~~was created or the expiration of a period of time that exceeds or might~~
38 ~~exceed twenty one years after the death of the survivor of a specific person~~
39 ~~who was alive when that trust or other property arrangement was created, that~~
40 ~~language is inoperative to the extent that it produces a period of time that~~
41 ~~exceeds twenty one years after the death of the survivor~~ AFTER THE EXPIRATION
42 OF THE LATEST PERIOD DESCRIBED BY SUBSECTION A, B OR C, THAT LANGUAGE IS IN
43 OPERATIVE TO THE EXTENT IT PRODUCES A PERIOD OF TIME THAT EXCEEDS FIVE
44 HUNDRED YEARS AFTER THE CREATION OF THE TRUST:

1 1. Disallow the vesting or termination of an interest or trust beyond
2 that time.

3 2. Postpone the vesting or termination of an interest or trust until
4 that time.

5 Sec. 7. Section 14-2905, Arizona Revised Statutes, is amended to read:

6 14-2905. Nonvested property interest or power of appointment;

7 creation; effective date; judicial reformation

8 A. Except as otherwise provided, this article applies to a nonvested
9 property interest or a power of appointment that is created on or after
10 December 31, 1994.

11 B. If a nonvested property interest or a power of appointment ~~was~~
12 ~~created before December 31, 1994 and is determined in a judicial~~
13 ~~proceeding, commenced on or after December 31, 1994, to violate this state's~~
14 ~~rule against perpetuities as that rule existed before December 31, 1994 WHEN~~
15 ~~THE NONVESTED PROPERTY INTEREST OR POWER OF APPOINTMENT WAS CREATED, a court~~
16 ~~on the petition of an interested person may reform the disposition in the~~
17 ~~manner that most closely approximates the transferor's manifested plan of~~
18 ~~distribution and that is within the limits of the rule against perpetuities~~
19 ~~applicable when the nonvested property interest or power of appointment was~~
20 ~~created~~ REQUIREMENTS OF SECTION 14-2901.

21 C. For purposes of this ~~section~~ ARTICLE, a nonvested property interest
22 or a power of appointment created by the exercise of a power of appointment
23 is created when the power is irrevocably exercised or when a revocable
24 exercise becomes irrevocable.

25 Sec. 8. Section 14-3703, Arizona Revised Statutes, is amended to read:

26 14-3703. General duties; relation and liability to persons

27 interested in estate; standing to sue

28 A. EXCEPT AS PROVIDED IN THE WILL OF THE DECEDENT, a personal
29 representative is a fiduciary who shall observe the standards of care
30 applicable to trustees as described by ~~section 14-7302~~ SECTIONS 14-10804 AND
31 14-10806 and the duties of accounting applicable to trustees as provided in
32 ~~section 14-7303~~ 14-10813, SUBSECTION C. A personal representative is under a
33 duty to settle and distribute the estate of the decedent in accordance with
34 the terms of any probated and effective will and this title, and as
35 expeditiously and efficiently as is consistent with the best interests of the
36 estate. The personal representative shall use the authority conferred by
37 this title, the terms of the will, if any, and any order in proceedings to
38 which the personal representative is a party for the best interests of
39 successors to the estate.

40 B. A personal representative shall not be surcharged for acts of
41 administration or distribution if the conduct in question was authorized at
42 the time. Subject to other obligations of administration, an informally
43 probated will is authority to administer and distribute the estate according
44 to its terms. An order of appointment of a personal representative, whether
45 issued in informal or formal proceedings, is authority to distribute

1 apparently intestate assets to the heirs of the decedent if, at the time of
2 distribution, the personal representative is not aware of a pending testacy
3 proceeding, a proceeding to vacate an order entered in an earlier testacy
4 proceeding, a formal proceeding questioning the personal representative's
5 appointment or fitness to continue, or a supervised administration
6 proceeding. Nothing in this section affects the duty of the personal
7 representative to administer and distribute the estate in accordance with the
8 rights of claimants, the surviving spouse, any minor children, any dependent
9 children and any pretermitted child of the decedent as described elsewhere in
10 this title.

11 C. Except as to proceedings ~~which~~ THAT do not survive the death of the
12 decedent, a personal representative of a decedent domiciled in this state at
13 death has the same standing to sue and be sued in the courts of this state
14 and the courts of any other jurisdiction as the decedent had immediately
15 prior to death.

16 Sec. 9. Section 14-3913, Arizona Revised Statutes, is amended to read:
17 14-3913. Distributions to trustee

18 A. Before distributing to a trustee, the personal representative may
19 require that the trustee inform the beneficiaries as provided in section
20 ~~14-7303~~ 14-10813, SUBSECTION B, PARAGRAPH 3, and if the state in which it is
21 to be administered provides for registration, that the trust be registered.

22 B. If the trust instrument does not excuse the trustee from giving
23 bond, the personal representative may petition the appropriate court to
24 require that the trustee post bond if ~~he~~ THE PERSONAL REPRESENTATIVE
25 apprehends that distribution might jeopardize the interests of persons who
26 are not able to protect themselves, and ~~he~~ THE PERSONAL REPRESENTATIVE may
27 withhold distribution until the court has acted.

28 C. ~~No~~ AN inference of negligence on the part of the personal
29 representative shall NOT be drawn from ~~his~~ THE PERSONAL REPRESENTATIVE'S
30 failure to exercise the authority conferred by subsections A and B of this
31 section.

32 Sec. 10. Section 14-3933, Arizona Revised Statutes, is amended to
33 read:

34 14-3933. Closing estates: statement of personal representative

35 A. Unless prohibited by order of the court and except for estates
36 being administered in supervised administration proceedings, a personal
37 representative may close an estate by filing with the court no earlier than
38 four months after the date of original appointment of a general personal
39 representative for the estate a verified statement stating that the personal
40 representative, or a previous personal representative has:

41 1. Determined that the time limit for presentation of creditors'
42 claims has expired.

43 2. Fully administered the estate of the decedent by making payment,
44 settlement or other disposition of all claims that were presented, expenses
45 of administration and estate, inheritance and other death taxes, except as

1 specified in the statement, and that the assets of the estate have been
2 distributed to the persons entitled. If any claims remain undischarged, the
3 statement shall state whether the personal representative has distributed the
4 estate subject to possible liability with the agreement of the distributees
5 or it shall state in detail other arrangements ~~which~~ THAT have been made to
6 accommodate outstanding liabilities.

7 3. Sent a copy of the statement to all distributees of the estate and
8 to all creditors or other claimants of whom the personal representative is
9 aware whose claims are neither paid nor barred and has furnished a full
10 account in writing of the personal representative's administration to the
11 distributees whose interests are affected thereby, ~~including guardians ad~~
12 ~~litem appointed pursuant to section 14-1403, paragraph 4, conservators and~~
13 ~~guardians.~~

14 B. If no proceedings involving the personal representative are pending
15 in the court one year after the closing statement is filed, the appointment
16 of the personal representative terminates.

17 Sec. 11. Section 14-5417, Arizona Revised Statutes, is amended to
18 read:

19 14-5417. General duty of conservator

20 In ~~the exercise of his~~ EXERCISING powers, a conservator is to act as a
21 fiduciary and shall observe the standard of care applicable to trustees as
22 described by ~~section 14-7302~~ SECTIONS 14-10804 AND 14-10806.

23 Sec. 12. Section 14-5419, Arizona Revised Statutes, is amended to
24 read:

25 14-5419. Accounts

26 A. Every conservator must account to the court for the administration
27 of the estate not less than annually on the anniversary date of qualifying as
28 conservator and also on resignation or removal, and on termination of the
29 protected person's minority or disability, except that for good cause shown
30 ~~upon~~ ON the application of an interested person, the court may relieve the
31 conservator of filing annual or other accounts by an order entered in the
32 minutes.

33 B. The court may take ~~such action as is~~ ANY appropriate ~~upon~~ ACTION ON
34 filing of annual or other accounts. In connection with any account, the
35 court may require a conservator to submit to a physical check of the estate
36 in the conservator's control, to be made in any manner the court may specify.

37 C. An adjudication allowing an intermediate or final account can be
38 made only ~~upon~~ ON petition, notice and a hearing. Notice must be given to:

39 1. The protected person.

40 2. A guardian of the protected person if one has been appointed,
41 unless the same person is serving as both guardian and conservator.

42 3. If no guardian has been appointed or the same person is serving as
43 both guardian and conservator, a spouse or, if the spouse is the conservator,
44 there ~~be~~ IS no spouse or the spouse is incapacitated, a parent or an adult
45 child who is not serving as a conservator.

1 4. A ~~guardian ad litem~~ REPRESENTATIVE appointed for the protected
2 person, if the court determines in accordance with section ~~14-1403~~ 14-1408
3 that representation of the interest of the protected person would otherwise
4 be inadequate.

5 D. An order, made ~~upon~~ ON notice and a hearing, allowing an
6 intermediate account of a conservator, adjudicates as to the conservator's
7 liabilities concerning the matters considered in connection therewith. An
8 order, made ~~upon~~ ON notice and a hearing, allowing a final account
9 adjudicates as to all previously unsettled liabilities of the conservator to
10 the protected person or the protected person's successors relating to the
11 conservatorship.

12 E. In any case in which the estate consists, in whole or in part, of
13 benefits paid by the veterans administration to the conservator or the
14 conservator's predecessor for the benefit of the protected person, the
15 veterans administration office ~~which~~ THAT has jurisdiction over the area is
16 entitled to a copy of any account filed under chapter 5, article 4 of this
17 title. Each year in which an account is not filed with the court, the
18 conservator ~~shall~~, if requested, SHALL submit an account to the appropriate
19 veterans administration office. If ~~such~~ an account is not submitted as
20 requested, or if it is found unsatisfactory by the veterans administration,
21 the court ~~shall, upon~~ ON receipt of notice ~~thereof~~, SHALL require the
22 conservator ~~forthwith~~ to IMMEDIATELY file an account with the court.

23 Sec. 13. Section 14-5603, Arizona Revised Statutes, is amended to
24 read:

25 14-5603. Deposit of funds; investment plan

26 A. All funds coming into the custody of the public fiduciary shall be
27 deposited in the county treasury and disbursed at the direction of the public
28 fiduciary or shall be deposited or invested in one or more insured banks or
29 in one or more insured credit unions authorized to do business in the county
30 or in one or more insured savings and loan associations authorized to do
31 business in the county, and if there are no such insured banks, insured
32 credit unions or insured savings and loan associations in the county, then
33 the public fiduciary may deposit ~~such~~ THE funds in any insured bank or
34 insured credit union or insured savings and loan association in the state.
35 Money deposited with the county treasurer or deposited or invested with an
36 insured bank, insured credit union or insured savings and loan association
37 shall be withdrawn only at the direction of the public fiduciary.

38 B. The public fiduciary may establish or continue an estate or
39 investment plan of ~~his~~ THE PUBLIC FIDUCIARY'S ward if all of the following
40 apply:

41 1. The public fiduciary receives the approval of the court for the
42 plan.

43 2. The plan is consistent with the standard of care imposed on
44 trustees in ~~section 14-7302~~ SECTIONS 14-10804 AND 14-10806.

1 3. The public fiduciary has obtained a surety bond in the amount of
2 the assets within the plan if the court finds that a surety bond is necessary
3 or desirable to protect the assets within the plan.

4 Sec. 14. Title 14, chapter 5, article 7, Arizona Revised Statutes, is
5 amended by adding section 14-5652, to read:

6 14-5652. Attorneys; fiduciary duties

7 A. ABSENT AN EXPRESS AGREEMENT TO THE CONTRARY, THE PERFORMANCE BY AN
8 ATTORNEY OF LEGAL SERVICES FOR A FIDUCIARY, SETTLOR OR TESTATOR DOES NOT BY
9 ITSELF ESTABLISH A DUTY IN CONTRACT OR TORT OR OTHERWISE TO ANY THIRD PARTY.
10 FOR THE PURPOSES OF THIS SUBSECTION, THIRD PARTY DOES NOT APPLY TO THE
11 PERSONAL REPRESENTATIVE, SETTLOR OR TESTATOR.

12 B. AN ATTORNEY WHO ACTS AS A PERSONAL REPRESENTATIVE OR TRUSTEE SHALL
13 DISCLOSE TO ALL ADULT PERSONS WHO HAVE AN INTEREST IN THE ESTATE OR TRUST THE
14 NAMES OF ANY PERSON WHO HAS AN INTEREST IN THAT ESTATE OR TRUST TO WHOM THE
15 ATTORNEY IS CURRENTLY RENDERING OR HAS IN THE PAST RENDERED LEGAL SERVICES.
16 THE ATTORNEY MUST MAKE THIS DISCLOSURE IN WRITING WITHIN A REASONABLE TIME
17 AFTER LEARNING THAT A CLIENT OR FORMER CLIENT HAS AN INTEREST IN THE ESTATE
18 OR TRUST. THE REPRESENTATION OF AN INTERESTED PERSON BY THAT ATTORNEY IS NOT
19 GROUNDS FOR REMOVING THE ATTORNEY AS THE PERSONAL REPRESENTATIVE OR TRUSTEE
20 UNLESS THE ATTORNEY IS UNABLE TO PERFORM THE FIDUCIARY DUTIES AS PERSONAL
21 REPRESENTATIVE OR TRUSTEE WITHOUT VIOLATING THE ATTORNEY'S ETHICAL
22 RESPONSIBILITIES TO THE CLIENT OR FORMER CLIENT.

23 Sec. 15. Repeal

24 Title 14, chapter 7, articles 2, 2.1, 3, 6 and 8, Arizona Revised
25 Statutes, are repealed.

26 Sec. 16. Title 14, Arizona Revised Statutes, is amended by adding
27 chapter 11, to read:

28 CHAPTER 11

29 ARIZONA TRUST CODE

30 ARTICLE 1. GENERAL PROVISIONS

31 14-10101. Short title

32 THIS CHAPTER MAY BE CITED AS THE ARIZONA TRUST CODE.

33 14-10102. Scope

34 THIS CHAPTER APPLIES TO EXPRESS TRUSTS, CHARITABLE OR NONCHARITABLE
35 TRUSTS AND TRUSTS CREATED PURSUANT TO A STATUTE, JUDGMENT OR DECREE THAT
36 REQUIRES THE TRUST TO BE ADMINISTERED IN THE MANNER OF AN EXPRESS TRUST.

37 14-10103. Definitions

38 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

39 1. "ACTION", WITH RESPECT TO AN ACT OF A TRUSTEE, INCLUDES A FAILURE
40 TO ACT.

41 2. "BENEFICIARY" MEANS A PERSON WHO EITHER:

42 (a) HAS A PRESENT OR FUTURE BENEFICIAL INTEREST IN A TRUST, VESTED OR
43 CONTINGENT.

44 (b) IN A CAPACITY OTHER THAN THAT OF A TRUSTEE, HOLDS A POWER OF
45 APPOINTMENT OVER TRUST PROPERTY.

1 3. "CHARITABLE TRUST" MEANS A TRUST, OR PORTION OF A TRUST, CREATED
2 FOR A CHARITABLE PURPOSE DESCRIBED IN SECTION 14-10405, SUBSECTION A.

3 4. "CONSERVATOR" MEANS A PERSON APPOINTED BY THE COURT TO ADMINISTER
4 THE ESTATE OF A MINOR OR AN ADULT.

5 5. "ENVIRONMENTAL LAW" MEANS A FEDERAL, STATE OR LOCAL LAW, RULE,
6 REGULATION OR ORDINANCE RELATING TO PROTECTION OF THE ENVIRONMENT.

7 6. "GUARDIAN" MEANS A PERSON APPOINTED BY THE COURT TO MAKE DECISIONS
8 REGARDING THE SUPPORT, CARE, EDUCATION, HEALTH AND WELFARE OF A MINOR OR AN
9 ADULT. GUARDIAN DOES NOT INCLUDE A GUARDIAN AD LITEM.

10 7. "INTERESTS OF THE BENEFICIARIES" MEANS THE BENEFICIAL INTERESTS
11 PROVIDED IN THE TERMS OF THE TRUST.

12 8. "INTERNAL REVENUE CODE" HAS THE SAME MEANING PRESCRIBED IN SECTION
13 43-105.

14 9. "JURISDICTION", WITH RESPECT TO A GEOGRAPHIC AREA, INCLUDES A STATE
15 OR COUNTRY.

16 10. "PERSON" MEANS AN INDIVIDUAL, CORPORATION, BUSINESS TRUST, ESTATE,
17 TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, JOINT VENTURE,
18 GOVERNMENT, GOVERNMENTAL SUBDIVISION, AGENCY OR INSTRUMENTALITY, PUBLIC
19 CORPORATION OR ANY OTHER LEGAL OR COMMERCIAL ENTITY.

20 11. "POWER OF WITHDRAWAL" MEANS A PRESENTLY EXERCISABLE GENERAL POWER
21 OF APPOINTMENT OTHER THAN A POWER EXERCISABLE EITHER:

22 (a) BY A TRUSTEE AND LIMITED BY AN ASCERTAINABLE STANDARD.

23 (b) BY A PERSON OTHER THAN IN A FIDUCIARY CAPACITY AND ONLY ON THE
24 CONSENT OF THE TRUSTEE OR A PERSON HOLDING AN ADVERSE INTEREST.

25 12. "PROPERTY" MEANS ANYTHING THAT MAY BE THE SUBJECT OF OWNERSHIP,
26 WHETHER REAL OR PERSONAL, LEGAL OR EQUITABLE, OR ANY INTEREST IN ANYTHING
27 THAT MAY BE THE SUBJECT OF OWNERSHIP.

28 13. "QUALIFIED BENEFICIARY" MEANS A BENEFICIARY WHO, ON THE DATE THE
29 BENEFICIARY'S QUALIFICATION IS DETERMINED:

30 (a) IS A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF TRUST INCOME OR
31 PRINCIPAL.

32 (b) WOULD BE A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF TRUST INCOME
33 OR PRINCIPAL IF THE INTERESTS OF THE DISTRIBUTEES DESCRIBED IN SUBDIVISION
34 (a) OF THIS PARAGRAPH TERMINATED ON THAT DATE.

35 (c) WOULD BE A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF TRUST INCOME
36 OR PRINCIPAL IF THE TRUST TERMINATED ON THAT DATE.

37 14. "REVOCABLE", AS APPLIED TO A TRUST OR A PORTION OF A TRUST, MEANS
38 REVOCABLE BY A SETTLOR WITHOUT THE CONSENT OF ANY PERSON, INCLUDING THE
39 TRUSTEE OR A PERSON WHO HOLDS AN INTEREST THAT IS EITHER ADVERSE OR NOT
40 ADVERSE.

41 15. "SETTLOR" MEANS A PERSON, INCLUDING A TESTATOR, WHO CREATES OR
42 CONTRIBUTES PROPERTY TO A TRUST. IF MORE THAN ONE PERSON CREATES OR
43 CONTRIBUTES PROPERTY TO A TRUST, EACH PERSON IS A SETTLOR OF THE PORTION OF
44 THE TRUST PROPERTY ATTRIBUTABLE TO THAT PERSON'S CONTRIBUTION EXCEPT TO THE
45 EXTENT ANOTHER PERSON HAS THE POWER TO REVOKE OR WITHDRAW THAT PORTION.

1 16. "SPECIAL NEEDS TRUST" MEANS A TRUST ESTABLISHED FOR THE BENEFIT OF
2 ONE OR MORE DISABLED PERSONS IF ONE OF THE PURPOSES OF THE TRUST, EXPRESSED
3 IN THE TRUST INSTRUMENT OR IMPLIED FROM THE TRUST INSTRUMENT, IS TO ALLOW THE
4 DISABLED PERSON TO QUALIFY OR CONTINUE TO QUALIFY FOR PUBLIC, CHARITABLE OR
5 PRIVATE BENEFITS THAT MIGHT OTHERWISE BE AVAILABLE TO THE DISABLED PERSON.
6 THE EXISTENCE OF ONE OR MORE NON DISABLED REMAINDER BENEFICIARIES OF THE
7 TRUST SHALL NOT DISQUALIFY IT AS A SPECIAL NEEDS TRUST FOR PURPOSES OF THIS
8 PARAGRAPH.

9 17. "SPENDTHRIFT PROVISION" MEANS A TERM OF A TRUST THAT RESTRAINS BOTH
10 VOLUNTARY AND INVOLUNTARY TRANSFER OF A BENEFICIARY'S INTEREST.

11 18. "STATE" MEANS A STATE OF THE UNITED STATES, THE DISTRICT OF
12 COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN ISLANDS OR ANY TERRITORY OR
13 INSULAR POSSESSION SUBJECT TO THE JURISDICTION OF THE UNITED STATES. STATE
14 INCLUDES AN INDIAN TRIBE OR BAND RECOGNIZED BY FEDERAL LAW OR FORMALLY
15 ACKNOWLEDGED BY A STATE.

16 19. "TERMS OF A TRUST" MEANS THE MANIFESTATION OF THE SETTLOR'S INTENT
17 REGARDING A TRUST'S PROVISIONS AS EXPRESSED IN THE TRUST INSTRUMENT OR AS MAY
18 BE ESTABLISHED BY OTHER EVIDENCE THAT WOULD BE ADMISSIBLE IN A JUDICIAL
19 PROCEEDING.

20 20. "TRUST INSTRUMENT" MEANS AN INSTRUMENT EXECUTED BY THE SETTLOR THAT
21 CONTAINS TERMS OF THE TRUST, INCLUDING ANY AMENDMENTS TO THAT TRUST.

22 21. "TRUSTEE" INCLUDES AN ORIGINAL, ADDITIONAL AND SUCCESSOR TRUSTEE
23 AND A COTRUSTEE.

24 14-10104. Knowledge

25 A. SUBJECT TO SUBSECTION B, A PERSON HAS KNOWLEDGE OF A FACT IF ANY OF
26 THE FOLLOWING APPLY:

- 27 1. THE PERSON HAS ACTUAL KNOWLEDGE OF IT.
28 2. THE PERSON HAS RECEIVED A NOTICE OR NOTIFICATION OF IT.
29 3. FROM ALL THE FACTS AND CIRCUMSTANCES KNOWN TO THE PERSON AT THE
30 TIME IN QUESTION, THE PERSON HAS REASON TO KNOW IT.

31 B. AN ORGANIZATION THAT CONDUCTS ACTIVITIES THROUGH EMPLOYEES HAS
32 NOTICE OR KNOWLEDGE OF A FACT INVOLVING A TRUST ONLY FROM THE TIME THE
33 INFORMATION WAS RECEIVED BY AN EMPLOYEE HAVING RESPONSIBILITY TO ACT FOR THE
34 TRUST OR WOULD HAVE BEEN BROUGHT TO THE EMPLOYEE'S ATTENTION IF THE
35 ORGANIZATION HAD EXERCISED REASONABLE DILIGENCE. AN ORGANIZATION EXERCISES
36 REASONABLE DILIGENCE IF IT MAINTAINS REASONABLE ROUTINES FOR COMMUNICATING
37 SIGNIFICANT INFORMATION TO THE EMPLOYEE HAVING RESPONSIBILITY TO ACT FOR THE
38 TRUST AND THERE IS REASONABLE COMPLIANCE WITH THE ROUTINES. REASONABLE
39 DILIGENCE DOES NOT REQUIRE AN EMPLOYEE OF THE ORGANIZATION TO COMMUNICATE
40 INFORMATION UNLESS THE COMMUNICATION IS PART OF THE INDIVIDUAL'S REGULAR
41 DUTIES OR THE INDIVIDUAL KNOWS A MATTER INVOLVING THE TRUST WOULD BE
42 MATERIALLY AFFECTED BY THE INFORMATION.

43 14-10105. Default and mandatory rules

44 A. EXCEPT AS OTHERWISE PROVIDED IN THE TERMS OF THE TRUST, THIS
45 CHAPTER GOVERNS:

1 1. THE DUTIES, POWERS, EXERCISE OF POWERS RESIGNATION, AND APPOINTMENT
2 OF A TRUSTEE.

3 2. CONFLICTS OF INTEREST OF A TRUSTEE.

4 3. RELATIONS AMONG TRUSTEES.

5 4. MERGERS OR DIVISIONS OF TRUSTS.

6 5. THE RIGHTS AND INTERESTS OF A BENEFICIARY.

7 B. THE TERMS OF A TRUST PREVAIL OVER ANY PROVISION OF THIS CHAPTER
8 EXCEPT:

9 1. THE REQUIREMENTS FOR CREATING A TRUST.

10 2. THE DUTY OF A TRUSTEE TO ACT IN GOOD FAITH AND IN ACCORDANCE WITH
11 THE PURPOSES OF THE TRUST.

12 3. THE REQUIREMENT THAT A TRUST AND ITS TERMS BE FOR THE BENEFIT OF
13 ITS BENEFICIARIES AND THAT THE TRUST HAVE A PURPOSE THAT IS LAWFUL, NOT
14 CONTRARY TO PUBLIC POLICY AND POSSIBLE TO ACHIEVE.

15 4. THE POWER OF THE COURT TO MODIFY OR TERMINATE A TRUST UNDER
16 SECTIONS 14-10410, 14-10411, 14-10412, 14-10413, 14-10414, 14-10415 AND
17 14-10416.

18 5. THE EFFECT OF A SPENDTHRIFT PROVISION AND THE RIGHTS OF CERTAIN
19 CREDITORS AND ASSIGNEES TO REACH A TRUST AS PROVIDED IN ARTICLE 5 OF THIS
20 CHAPTER.

21 6. THE POWER OF THE COURT UNDER SECTION 14-10702 TO REQUIRE, DISPENSE
22 WITH, MODIFY OR TERMINATE A BOND.

23 7. THE POWER OF THE COURT UNDER SECTION 14-10708, SUBSECTION B TO
24 ADJUST A TRUSTEE'S COMPENSATION SPECIFIED IN THE TERMS OF THE TRUST THAT IS
25 UNREASONABLY LOW OR HIGH.

26 8. THE DUTY TO RESPOND TO THE REQUEST OF A QUALIFIED BENEFICIARY OF AN
27 IRREVOCABLE TRUST FOR TRUSTEE'S REPORTS AND OTHER INFORMATION REASONABLY
28 RELATED TO THE ADMINISTRATION OF A TRUST.

29 9. THE EFFECT OF AN EXCULPATORY TERM UNDER SECTION 14-11008.

30 10. THE RIGHTS UNDER SECTIONS 14-11010, 14-11011, 14-11012 AND 14-11013
31 OF A PERSON OTHER THAN A TRUSTEE OR BENEFICIARY.

32 11. PERIODS OF LIMITATION FOR COMMENCING A JUDICIAL PROCEEDING.

33 12. THE POWER OF THE COURT TO TAKE ACTION AND EXERCISE JURISDICTION AS
34 MAY BE NECESSARY IN THE INTERESTS OF JUSTICE.

35 13. THE SUBJECT MATTER JURISDICTION OF THE COURT AND VENUE FOR
36 COMMENCING A PROCEEDING AS PROVIDED IN SECTIONS 14-10203 AND 14-10204.

37 14. THE NOTICE PROVISIONS OF SECTION 14-10110, SUBSECTION B.

38 14-10106. Common law of trusts; principles of equity

39 A. THE COMMON LAW OF TRUSTS AND PRINCIPLES OF EQUITY SUPPLEMENT THIS
40 CHAPTER, EXCEPT TO THE EXTENT MODIFIED BY THIS CHAPTER OR ANOTHER STATUTE OF
41 THIS STATE.

42 B. THE COURT SHALL LOOK TO THE RESTATEMENT (SECOND) OF TRUSTS FOR
43 INTERPRETATION OF THE COMMON LAW AND NOT TO SUBSEQUENT RESTATEMENTS OF TRUSTS
44 TO DETERMINE:

- 1 1. THE RIGHTS AND POWERS OF CREDITORS OF BENEFICIARIES.
- 2 2. THE DUTIES OF TRUSTEES TO DISTRIBUTE TO THOSE TO WHOM A BENEFICIARY
- 3 OWES ANY DUTIES.
- 4 3. WHETHER PUBLIC POLICY MAY AFFECT ENFORCEABILITY AND EFFECTIVENESS
- 5 OF THE TERMS OF THE TRUST.
- 6 4. AND EFFECTUATE THE SETTLOR'S INTENT.
- 7 14-10107. Governing law
- 8 A. THE MEANING AND EFFECT OF THE TERMS OF A TRUST ARE DETERMINED BY
- 9 THE LAW OF THE JURISDICTION DESIGNATED IN THE TERMS OF THE TRUST INSTRUMENT.
- 10 B. IN THE ABSENCE OF A CONTROLLING DESIGNATION IN THE TERMS OF THE
- 11 TRUST, THE LAWS OF THE JURISDICTION WHERE THE TRUST WAS EXECUTED DETERMINE
- 12 THE VALIDITY OF THE TRUST, AND THE LAWS OF DESCENT AND THE LAW OF THE
- 13 PRINCIPAL PLACE OF ADMINISTRATION DETERMINE THE ADMINISTRATION OF THE TRUST.
- 14 14-10108. Principal place of administration
- 15 A. WITHOUT PRECLUDING OTHER MEANS FOR ESTABLISHING A SUFFICIENT
- 16 CONNECTION WITH THE DESIGNATED JURISDICTION, TERMS OF A TRUST DESIGNATING THE
- 17 PRINCIPAL PLACE OF ADMINISTRATION ARE VALID AND CONTROLLING IF EITHER:
- 18 1. A TRUSTEE'S PRINCIPAL PLACE OF BUSINESS IS LOCATED IN OR A TRUSTEE
- 19 IS A RESIDENT OF THE DESIGNATED JURISDICTION.
- 20 2. ALL OR PART OF THE ADMINISTRATION OCCURS IN THE DESIGNATED
- 21 JURISDICTION.
- 22 B. A TRUSTEE IS UNDER A CONTINUING DUTY TO ADMINISTER THE TRUST AT A
- 23 PLACE APPROPRIATE TO ITS PURPOSES, ITS ADMINISTRATION AND THE INTERESTS OF
- 24 THE BENEFICIARIES.
- 25 C. WITHOUT PRECLUDING THE RIGHT OF THE COURT TO ORDER, APPROVE OR
- 26 DISAPPROVE A TRANSFER, THE TRUSTEE, IN FURTHERANCE OF THE DUTY PRESCRIBED BY
- 27 SUBSECTION B OF THIS SECTION, MAY TRANSFER THE TRUST'S PRINCIPAL PLACE OF
- 28 ADMINISTRATION TO ANOTHER STATE OR TO A JURISDICTION OUTSIDE OF THE UNITED
- 29 STATES.
- 30 D. THE TRUSTEE SHALL NOTIFY THE QUALIFIED BENEFICIARIES OF A PROPOSED
- 31 TRANSFER OF A TRUST'S PRINCIPAL PLACE OF ADMINISTRATION AT LEAST SIXTY DAYS
- 32 BEFORE INITIATING THE TRANSFER. UNLESS A CORPORATE TRUSTEE INDICATES AN
- 33 INTENT TO CHANGE THE PRINCIPAL PLACE OF BUSINESS IN A NOTICE TO QUALIFIED
- 34 BENEFICIARIES, A TRANSFER BY THE CORPORATE TRUSTEE OF SOME OF THE FUNCTIONS
- 35 OF A TRUST TO ANOTHER STATE OR STATES IS NOT A TRANSFER OF THE TRUST'S
- 36 PRINCIPAL PLACE OF BUSINESS IF THE CORPORATE TRUSTEE MAINTAINS AN OFFICE IN
- 37 THIS STATE. THE NOTICE OF PROPOSED TRANSFER MUST INCLUDE:
- 38 1. THE NAME OF THE JURISDICTION TO WHICH THE PRINCIPAL PLACE OF
- 39 ADMINISTRATION IS TO BE TRANSFERRED.
- 40 2. THE ADDRESS AND TELEPHONE NUMBER OF THE NEW LOCATION AT WHICH THE
- 41 TRUSTEE CAN BE CONTACTED.
- 42 3. AN EXPLANATION OF THE REASONS FOR THE PROPOSED TRANSFER.
- 43 4. THE DATE ON WHICH THE PROPOSED TRANSFER IS ANTICIPATED TO OCCUR.

1 5. THE DATE, AT LEAST SIXTY DAYS AFTER THE GIVING OF THE NOTICE, BY
2 WHICH THE QUALIFIED BENEFICIARY MUST NOTIFY THE TRUSTEE OF AN OBJECTION TO
3 THE PROPOSED TRANSFER.

4 E. THE AUTHORITY OF A TRUSTEE UNDER THIS SECTION TO TRANSFER A TRUST'S
5 PRINCIPAL PLACE OF ADMINISTRATION TERMINATES IF A QUALIFIED BENEFICIARY
6 NOTIFIES THE TRUSTEE IN WRITING OF AN OBJECTION TO THE PROPOSED TRANSFER ON
7 OR BEFORE THE DATE SPECIFIED IN THE NOTICE.

8 F. IN CONNECTION WITH A TRANSFER OF THE TRUST'S PRINCIPAL PLACE OF
9 ADMINISTRATION, THE TRUSTEE MAY TRANSFER SOME OR ALL OF THE TRUST PROPERTY TO
10 A SUCCESSOR TRUSTEE DESIGNATED IN THE TERMS OF THE TRUST OR APPOINTED
11 PURSUANT TO SECTION 14-10704.

12 14-10109. Methods and waiver of notice

13 A. NOTICE TO A PERSON UNDER THIS CHAPTER OR THE SENDING OF A DOCUMENT
14 TO A PERSON UNDER THIS CHAPTER MUST BE ACCOMPLISHED IN A MANNER REASONABLY
15 SUITABLE UNDER THE CIRCUMSTANCES AND LIKELY TO RESULT IN RECEIPT OF THE
16 NOTICE OR DOCUMENT. PERMISSIBLE METHODS OF NOTICE OR FOR SENDING A DOCUMENT
17 INCLUDE FIRST CLASS MAIL, PERSONAL DELIVERY, DELIVERY TO THE PERSON'S LAST
18 KNOWN PLACE OF RESIDENCE OR PLACE OF BUSINESS OR A PROPERLY DIRECTED
19 ELECTRONIC MESSAGE.

20 B. NOTICE OTHERWISE REQUIRED UNDER THIS CHAPTER OR A DOCUMENT
21 OTHERWISE REQUIRED TO BE SENT UNDER THIS CHAPTER NEED NOT BE PROVIDED TO A
22 PERSON WHOSE IDENTITY OR LOCATION IS UNKNOWN TO AND NOT REASONABLY
23 ASCERTAINABLE BY THE TRUSTEE.

24 C. NOTICE UNDER THIS CHAPTER OR THE SENDING OF A DOCUMENT UNDER THIS
25 CHAPTER MAY BE WAIVED BY THE PERSON TO BE NOTIFIED OR SENT THE DOCUMENT.

26 D. NOTICE OF A JUDICIAL PROCEEDING MUST BE GIVEN PURSUANT TO SECTION
27 14-1401.

28 14-10110. Others treated as qualified beneficiaries

29 A. A CHARITABLE ORGANIZATION THAT IS EXPRESSLY AND IRREVOCABLY
30 DESIGNATED TO RECEIVE DISTRIBUTIONS UNDER THE TERMS OF A CHARITABLE TRUST OR
31 A PERSON APPOINTED TO ENFORCE A TRUST CREATED FOR THE CARE OF AN ANIMAL OR
32 ANOTHER NONCHARITABLE PURPOSE AS PROVIDED IN SECTION 14-10408 OR 14-10409 HAS
33 THE RIGHTS OF A QUALIFIED BENEFICIARY UNDER THIS CHAPTER.

34 B. WITH RESPECT TO A CHARITABLE TRUST CREATED ON OR AFTER JANUARY 1,
35 2009 HAVING ITS PRINCIPAL PLACE OF ADMINISTRATION IN THIS STATE, A TRUSTEE:

36 1. WITHIN SIXTY DAYS AFTER THE CREATION OF A CHARITABLE TRUST, SHALL
37 PROMPTLY FURNISH TO THE ATTORNEY GENERAL A COPY OF THE PORTIONS OF THE
38 CHARITABLE TRUST INSTRUMENT THAT ARE NECESSARY TO DESCRIBE THE CHARITABLE
39 PURPOSE.

40 2. WITHIN SIXTY DAYS AFTER ACCEPTING A TRUSTEESHIP FOR A CHARITABLE
41 TRUST, SHALL NOTIFY THE ATTORNEY GENERAL OF THE ACCEPTANCE AND OF THE
42 TRUSTEE'S NAME, ADDRESS AND TELEPHONE NUMBER.

43 3. AT LEAST THIRTY DAYS IN ADVANCE, SHALL NOTIFY THE ATTORNEY GENERAL
44 OF ANY OF THE FOLLOWING:

1 (a) ANY CHANGE IN THE CHARITABLE TRUST'S PRINCIPAL PLACE OF
2 ADMINISTRATION TO ANOTHER STATE.

3 (b) ANY DISSOLUTION OF THE CHARITABLE TRUST.

4 (c) ANY CHANGE IN THE CHARITABLE PURPOSE OF THE CHARITABLE TRUST.

5 (d) ANY COURT PROCEEDINGS REGARDING THE CHARITABLE TRUST.

6 (e) ANY CHANGE IN THE METHOD OR RATE OF THE TRUSTEE'S COMPENSATION.

7 C. FOR THE PURPOSES OF SUBSECTION B OF THIS SECTION, A "CHARITABLE
8 TRUST" MEANS A TRUST THAT IS A QUALIFIED ENTITY UNDER SECTION 501(C)(3) OF
9 THE INTERNAL REVENUE CODE FOR TAX EXEMPT STATUS UNDER SECTION 501(A) OF THE
10 INTERNAL REVENUE CODE.

11 14-10111. Nonjudicial settlement agreements; definition

12 A. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION B OF THIS SECTION, AND
13 EXCEPT FOR MODIFICATION OR TERMINATION OF A TRUST AS OTHERWISE PERMITTED
14 PURSUANT TO THE TRUST INSTRUMENT, INTERESTED PERSONS MAY ENTER INTO A BINDING
15 NONJUDICIAL SETTLEMENT AGREEMENT WITH RESPECT TO ANY MATTER INVOLVING A
16 TRUST.

17 B. A NONJUDICIAL SETTLEMENT AGREEMENT IS VALID ONLY TO THE EXTENT IT
18 DOES NOT VIOLATE A MATERIAL PURPOSE OF THE TRUST AND INCLUDES TERMS AND
19 CONDITIONS THAT COULD BE PROPERLY APPROVED BY THE COURT UNDER THIS CHAPTER OR
20 OTHER APPLICABLE LAW.

21 C. MATTERS THAT MAY BE RESOLVED BY A NONJUDICIAL SETTLEMENT AGREEMENT
22 INCLUDE:

23 1. THE INTERPRETATION OR CONSTRUCTION OF THE TERMS OF THE TRUST.

24 2. THE APPROVAL OF A TRUSTEE'S REPORT OR ACCOUNTING.

25 3. DIRECTION TO A TRUSTEE TO REFRAIN FROM PERFORMING A PARTICULAR ACT
26 OR THE GRANT TO A TRUSTEE OF ANY NECESSARY OR DESIRABLE POWER.

27 4. THE RESIGNATION OR APPOINTMENT OF A TRUSTEE AND THE DETERMINATION
28 OF A TRUSTEE'S COMPENSATION.

29 5. THE TRANSFER OF A TRUST'S PRINCIPAL PLACE OF ADMINISTRATION.

30 6. THE LIABILITY OF A TRUSTEE FOR AN ACTION RELATING TO THE TRUST.

31 D. ANY INTERESTED PERSON MAY REQUEST THE COURT TO APPROVE A
32 NONJUDICIAL SETTLEMENT AGREEMENT TO DETERMINE WHETHER THE REPRESENTATION AS
33 PROVIDED IN ARTICLE 3 OF THIS CHAPTER WAS ADEQUATE AND TO DETERMINE WHETHER
34 THE AGREEMENT CONTAINS TERMS AND CONDITIONS THE COURT COULD HAVE PROPERLY
35 APPROVED.

36 E. THIS SECTION APPLIES ONLY TO ANY TRUST THAT BECOMES IRREVOCABLE ON
37 OR AFTER JANUARY 1, 2009.

38 F. FOR THE PURPOSES OF THIS SECTION, "INTERESTED PERSON" HAS THE SAME
39 MEANING PRESCRIBED IN SECTION 14-1201.

40 14-10112. Rules of construction

41 THE RULES OF CONSTRUCTION THAT APPLY IN THIS STATE TO THE
42 INTERPRETATION OF AND DISPOSITION OF PROPERTY BY WILL ALSO APPLY AS
43 APPROPRIATE TO THE INTERPRETATION OF THE TERMS OF A TRUST AND THE DISPOSITION
44 OF THE TRUST PROPERTY.

ARTICLE 2. JUDICIAL PROCEEDINGS

14-10201. Role of court in administration of trust

A. THE COURT MAY INTERVENE IN THE ADMINISTRATION OF A TRUST TO THE EXTENT ITS JURISDICTION IS INVOKED BY AN INTERESTED PERSON OR AS PROVIDED BY LAW.

B. A TRUST IS NOT SUBJECT TO CONTINUING JUDICIAL SUPERVISION UNLESS ORDERED BY THE COURT.

C. A JUDICIAL PROCEEDING INVOLVING A TRUST MAY RELATE TO ANY MATTER INVOLVING THE TRUST'S ADMINISTRATION, INCLUDING A REQUEST FOR INSTRUCTIONS AND AN ACTION TO DECLARE RIGHTS.

14-10202. Jurisdiction over trustee and beneficiary

A. BY ACCEPTING THE TRUSTEESHIP OF A TRUST HAVING ITS PRINCIPAL PLACE OF ADMINISTRATION IN THIS STATE OR BY MOVING THE PRINCIPAL PLACE OF ADMINISTRATION TO THIS STATE, THE TRUSTEE SUBMITS PERSONALLY TO THE JURISDICTION OF THE COURTS OF THIS STATE REGARDING ANY MATTER INVOLVING THE TRUST.

B. WITH RESPECT TO THEIR INTERESTS IN THE TRUST, THE BENEFICIARIES OF A TRUST HAVING ITS PRINCIPAL PLACE OF ADMINISTRATION IN THIS STATE ARE SUBJECT TO THE JURISDICTION OF THE COURTS OF THIS STATE REGARDING ANY MATTER INVOLVING THE TRUST. BY ACCEPTING A DISTRIBUTION FROM SUCH A TRUST, THE RECIPIENT SUBMITS PERSONALLY TO THE JURISDICTION OF THE COURTS OF THIS STATE REGARDING ANY MATTER INVOLVING THE TRUST.

C. THIS SECTION DOES NOT PRECLUDE OTHER METHODS OF OBTAINING JURISDICTION OVER A TRUSTEE, BENEFICIARY OR OTHER PERSON RECEIVING PROPERTY FROM THE TRUST.

14-10203. Subject matter jurisdiction

A. THE SUPERIOR COURT HAS EXCLUSIVE JURISDICTION OF PROCEEDINGS IN THIS STATE BROUGHT BY A TRUSTEE OR BENEFICIARY CONCERNING THE ADMINISTRATION OF A TRUST.

B. THE SUPERIOR COURT HAS CONCURRENT JURISDICTION WITH OTHER COURTS OF THIS STATE OF OTHER PROCEEDINGS INVOLVING A TRUST.

14-10204. Venue

A. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION B, VENUE FOR A JUDICIAL PROCEEDING INVOLVING A TRUST IS IN THE COUNTY OF THIS STATE IN WHICH THE TRUST'S PRINCIPAL PLACE OF ADMINISTRATION IS OR WILL BE LOCATED AND, IF THE TRUST IS CREATED BY WILL AND THE ESTATE IS NOT YET CLOSED, IN THE COUNTY IN WHICH THE DECEDENT'S ESTATE IS BEING ADMINISTERED.

B. IF A TRUST HAS NO TRUSTEE, VENUE FOR A JUDICIAL PROCEEDING FOR THE APPOINTMENT OF A TRUSTEE IS IN A COUNTY OF THIS STATE IN WHICH A BENEFICIARY RESIDES, IN A COUNTY IN WHICH ANY TRUST PROPERTY IS LOCATED, AND IF THE TRUST IS CREATED BY WILL, IN THE COUNTY IN WHICH THE DECEDENT'S ESTATE WAS OR IS BEING ADMINISTERED.

1 14-10205. Alternative dispute resolution

2 A TRUST INSTRUMENT MAY PROVIDE MANDATORY, EXCLUSIVE AND REASONABLE
3 PROCEDURES TO RESOLVE ISSUES BETWEEN THE TRUSTEE AND INTERESTED PERSONS OR
4 AMONG INTERESTED PERSONS WITH REGARD TO THE ADMINISTRATION OR DISTRIBUTION OF
5 THE TRUST.

6 ARTICLE 3. REPRESENTATION

7 14-10301. Representation

8 SECTIONS 14-1404, 14-1405, 14-1406, 14-1407 AND 14-1408 APPLY TO TRUSTS
9 GOVERNED BY THIS CHAPTER.

10 ARTICLE 4. CREATION, VALIDITY, MODIFICATION
11 AND TERMINATION OF TRUST

12 14-10401. Methods of creating trust

13 A TRUST MAY BE CREATED BY:

14 1. TRANSFER OF PROPERTY TO ANOTHER PERSON AS TRUSTEE DURING THE
15 SETTLOR'S LIFETIME OR BY WILL OR OTHER DISPOSITION TAKING EFFECT ON THE
16 SETTLOR'S DEATH.

17 2. DECLARATION BY THE OWNER OF PROPERTY THAT THE OWNER HOLDS
18 IDENTIFIABLE PROPERTY AS TRUSTEE.

19 3. EXERCISE OF A POWER OF APPOINTMENT IN FAVOR OF A TRUSTEE.

20 14-10402. Requirements for creation

21 A. EXCEPT AS PROVIDED IN SECTION 14-5409, A TRUST IS CREATED ONLY IF
22 ALL OF THE FOLLOWING ARE TRUE:

23 1. THE SETTLOR HAS CAPACITY TO CREATE A TRUST.

24 2. THE SETTLOR INDICATES AN INTENTION TO CREATE THE TRUST.

25 3. THE TRUST HAS A DEFINITE BENEFICIARY OR IS:

26 (a) A CHARITABLE TRUST.

27 (b) A TRUST FOR THE CARE OF AN ANIMAL, AS PROVIDED IN SECTION
28 14-10408.

29 (c) A TRUST FOR A NONCHARITABLE PURPOSE, AS PROVIDED IN SECTION
30 14-10409.

31 4. THE TRUSTEE HAS DUTIES TO PERFORM.

32 5. THE SAME PERSON IS NOT THE SOLE TRUSTEE AND SOLE BENEFICIARY.

33 B. A BENEFICIARY IS DEFINITE IF THE BENEFICIARY CAN BE ASCERTAINED NOW
34 OR IN THE FUTURE, SUBJECT TO ANY APPLICABLE RULE AGAINST PERPETUITIES.

35 C. A POWER IN A TRUSTEE OR OTHER PERSON TO SELECT A BENEFICIARY FROM
36 AN INDEFINITE CLASS IS VALID. IF THE POWER IS NOT EXERCISED WITHIN A
37 REASONABLE TIME, THE POWER FAILS AND THE PROPERTY SUBJECT TO THE POWER PASSES
38 TO THE PERSONS WHO WOULD HAVE TAKEN THE PROPERTY HAD THE POWER NOT BEEN
39 CONFERRED.

40 14-10403. Trusts created in other jurisdictions

41 A TRUST NOT CREATED BY WILL IS VALIDLY CREATED IF ITS CREATION COMPLIES
42 WITH THE LAW OF THE JURISDICTION IN WHICH THE TRUST INSTRUMENT WAS EXECUTED
43 OR THE LAW OF THE JURISDICTION IN WHICH, AT THE TIME OF CREATION, EITHER:

- 1 1. THE SETTLOR WAS DOMICILED, HAD A PLACE OF ABODE OR WAS A NATIONAL.
- 2 2. A TRUSTEE WAS DOMICILED OR HAD A PLACE OF BUSINESS.
- 3 3. ANY TRUST PROPERTY WAS LOCATED.

4 14-10404. Trust purposes

5 A TRUST MAY BE CREATED ONLY TO THE EXTENT THAT ITS PURPOSES ARE LAWFUL,
6 NOT CONTRARY TO PUBLIC POLICY AND POSSIBLE TO ACHIEVE. A TRUST AND ITS TERMS
7 MUST BE FOR THE BENEFIT OF ITS BENEFICIARIES.

8 14-10405. Charitable purposes; enforcement

9 A. A CHARITABLE TRUST MAY BE CREATED FOR THE RELIEF OF POVERTY, THE
10 ADVANCEMENT OF EDUCATION, RELIGION OR SCIENCE, THE PROMOTION OF HEALTH,
11 GOVERNMENTAL OR MUNICIPAL PURPOSES OR OTHER PURPOSES, THE ACHIEVEMENT OF
12 WHICH IS BENEFICIAL TO THE COMMUNITY, OR FOR THE SUPPORT OF ONE OR MORE
13 ORGANIZATIONS THAT HAVE THE PURPOSES PRESCRIBED IN THIS SECTION EXCLUSIVELY.

14 B. IF THE TERMS OF A CHARITABLE TRUST DO NOT INDICATE A PARTICULAR
15 CHARITABLE PURPOSE OR BENEFICIARY, THE COURT MAY SELECT ONE OR MORE
16 CHARITABLE PURPOSES OR BENEFICIARIES. THE SELECTION MUST BE CONSISTENT WITH
17 THE SETTLOR'S INTENTION TO THE EXTENT IT CAN BE ASCERTAINED.

18 C. THE SETTLOR OF A CHARITABLE TRUST, AMONG OTHERS, MAY MAINTAIN A
19 PROCEEDING TO ENFORCE THE TRUST.

20 14-10406. Creation of trust induced by fraud, duress or undue
21 influence

22 A TRUST IS VOID, IN WHOLE OR IN PART, TO THE EXTENT ITS CREATION WAS
23 INDUCED BY FRAUD, DURESS OR UNDUE INFLUENCE.

24 14-10407. Evidence of oral trust

25 EXCEPT AS REQUIRED BY A STATUTE OTHER THAN THIS CHAPTER, A TRUST NEED
26 NOT BE EVIDENCED BY A TRUST INSTRUMENT, BUT THE CREATION OF AN ORAL TRUST
27 SHALL BE ESTABLISHED ONLY BY CLEAR AND CONVINCING EVIDENCE AND ITS TERMS
28 SHALL BE ESTABLISHED BY A PREPONDERANCE OF THE EVIDENCE.

29 14-10408. Trust for care of animal

30 A. A TRUST MAY BE CREATED TO PROVIDE FOR THE CARE OF AN ANIMAL ALIVE
31 DURING THE SETTLOR'S LIFETIME. THE TRUST TERMINATES ON THE DEATH OF THE
32 ANIMAL OR, IF THE TRUST WAS CREATED TO PROVIDE FOR THE CARE OF MORE THAN ONE
33 ANIMAL ALIVE DURING THE SETTLOR'S LIFETIME, ON THE DEATH OF THE LAST
34 SURVIVING ANIMAL.

35 B. A TRUST AUTHORIZED BY THIS SECTION MAY BE ENFORCED BY A PERSON
36 APPOINTED IN THE TERMS OF THE TRUST OR, IF NO PERSON IS SO APPOINTED, BY A
37 PERSON APPOINTED BY THE COURT. A PERSON HAVING AN INTEREST IN THE WELFARE OF
38 THE ANIMAL MAY REQUEST THE COURT TO APPOINT A PERSON TO ENFORCE THE TRUST OR
39 TO REMOVE A PERSON APPOINTED.

40 C. PROPERTY OF A TRUST AUTHORIZED BY THIS SECTION MAY BE APPLIED ONLY
41 TO ITS INTENDED USE, EXCEPT TO THE EXTENT THE COURT DETERMINES THAT THE VALUE
42 OF THE TRUST PROPERTY EXCEEDS THE AMOUNT REQUIRED FOR THE INTENDED USE.
43 EXCEPT AS OTHERWISE PROVIDED IN THE TERMS OF THE TRUST, PROPERTY NOT REQUIRED
44 FOR THE INTENDED USE MUST BE DISTRIBUTED TO THE SETTLOR, IF THEN LIVING, OR
45 OTHERWISE TO THE SETTLOR'S SUCCESSORS IN INTEREST.

14-10409. Noncharitable trust without ascertainable beneficiary
EXCEPT AS OTHERWISE PROVIDED IN SECTION 14-10408 OR BY ANOTHER STATUTE,
THE FOLLOWING RULES APPLY:

1. A TRUST MAY BE CREATED FOR A NONCHARITABLE PURPOSE WITHOUT A DEFINITE OR DEFINITELY ASCERTAINABLE BENEFICIARY OR FOR A NONCHARITABLE BUT OTHERWISE VALID PURPOSE TO BE SELECTED BY THE TRUSTEE, PROVIDED THAT THE TRUST MAY NOT BE ENFORCED FOR MORE THAN NINETY YEARS AFTER ITS CREATION.

2. A TRUST AUTHORIZED BY THIS SECTION MAY BE ENFORCED BY A PERSON APPOINTED IN THE TERMS OF THE TRUST OR, IF NO PERSON IS SO APPOINTED, BY A PERSON APPOINTED BY THE COURT.

3. PROPERTY OF A TRUST AUTHORIZED BY THIS SECTION MAY BE APPLIED ONLY TO ITS INTENDED USE, EXCEPT TO THE EXTENT THE COURT DETERMINES THAT THE VALUE OF THE TRUST PROPERTY EXCEEDS THE AMOUNT REQUIRED FOR THE INTENDED USE. EXCEPT AS OTHERWISE PROVIDED IN THE TERMS OF THE TRUST, PROPERTY NOT REQUIRED FOR THE INTENDED USE MUST BE DISTRIBUTED TO THE SETTLOR, IF THEN LIVING, OR OTHERWISE TO THE SETTLOR'S SUCCESSORS IN INTEREST.

14-10410. Modification or termination of trust; proceedings for approval or disapproval

A. IN ADDITION TO THE METHODS OF TERMINATION PRESCRIBED BY SECTIONS 14-10411, 14-10412, 14-10413 AND 14-10414, A TRUST TERMINATES TO THE EXTENT THE TRUST IS REVOKED OR EXPIRES PURSUANT TO ITS TERMS, NO PURPOSE OF THE TRUST REMAINS TO BE ACHIEVED OR THE PURPOSES OF THE TRUST HAVE BECOME UNLAWFUL, CONTRARY TO PUBLIC POLICY OR IMPOSSIBLE TO ACHIEVE.

B. A PROCEEDING TO APPROVE OR DISAPPROVE A PROPOSED MODIFICATION OR TERMINATION UNDER SECTIONS 14-10411, 14-10412, 14-10413, 14-10414, 14-10415 AND 14-10416, OR TRUST COMBINATION OR DIVISION UNDER SECTION 14-10417, MAY BE COMMENCED BY A TRUSTEE OR BENEFICIARY, AND A PROCEEDING TO APPROVE OR DISAPPROVE A PROPOSED MODIFICATION OR TERMINATION UNDER SECTION 14-10411 MAY BE COMMENCED BY THE SETTLOR. THE SETTLOR OF A CHARITABLE TRUST MAY MAINTAIN A PROCEEDING TO MODIFY THE TRUST UNDER SECTION 14-10413.

14-10411. Modification or termination of noncharitable
irrevocable trust by consent

A. A NONCHARITABLE IRREVOCABLE TRUST MAY BE TERMINATED ON CONSENT OF ALL OF THE BENEFICIARIES IF THE COURT CONCLUDES THAT CONTINUANCE OF THE TRUST IS NOT NECESSARY TO ACHIEVE ANY MATERIAL PURPOSE OF THE TRUST. A NONCHARITABLE IRREVOCABLE TRUST MAY BE MODIFIED ON CONSENT OF ALL OF THE BENEFICIARIES IF THE COURT CONCLUDES THAT MODIFICATION IS NOT INCONSISTENT WITH A MATERIAL PURPOSE OF THE TRUST.

B. ON TERMINATION OF A TRUST UNDER SUBSECTION A, THE TRUSTEE SHALL
DISTRIBUTE THE TRUST PROPERTY AS AGREED BY THE BENEFICIARIES.

C. IF NOT ALL OF THE BENEFICIARIES CONSENT TO A PROPOSED MODIFICATION OR TERMINATION OF THE TRUST UNDER SUBSECTION A, THE MODIFICATION OR TERMINATION MAY BE APPROVED BY THE COURT IF THE COURT IS SATISFIED THAT:

1 1. IF ALL OF THE BENEFICIARIES HAD CONSENTED, THE TRUST COULD HAVE
2 BEEN MODIFIED OR TERMINATED UNDER THIS SECTION.

3 2. THE INTERESTS OF A BENEFICIARY WHO DOES NOT CONSENT WILL BE
4 ADEQUATELY PROTECTED.

5 14-10412. Modification or termination because of unanticipated
6 circumstances or inability to administer trust
7 effectively

8 A. THE COURT MAY MODIFY THE ADMINISTRATIVE OR DISPOSITIVE TERMS OF A
9 TRUST OR TERMINATE THE TRUST IF, BECAUSE OF CIRCUMSTANCES NOT ANTICIPATED BY
10 THE SETTLOR, MODIFICATION OR TERMINATION WILL FURTHER THE PURPOSES OF THE
11 TRUST. TO THE EXTENT PRACTICABLE, THE MODIFICATION MUST BE MADE IN
12 ACCORDANCE WITH THE SETTLOR'S PROBABLE INTENTION.

13 B. THE COURT MAY MODIFY THE ADMINISTRATIVE TERMS OF A TRUST IF
14 CONTINUATION OF THE TRUST ON ITS EXISTING TERMS WOULD BE IMPRACTICABLE OR
15 WASTEFUL OR WOULD IMPAIR THE TRUST'S ADMINISTRATION.

16 C. ON TERMINATION OF A TRUST UNDER THIS SECTION, THE TRUSTEE SHALL
17 DISTRIBUTE THE TRUST PROPERTY IN A MANNER CONSISTENT WITH THE PURPOSES OF THE
18 TRUST.

19 14-10413. Cy pres

20 A. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION B, IF A PARTICULAR
21 CHARITABLE PURPOSE BECOMES UNLAWFUL, IMPRACTICABLE, IMPOSSIBLE TO ACHIEVE OR
22 WASTEFUL:

23 1. THE TRUST DOES NOT FAIL IN WHOLE OR IN PART.

24 2. THE TRUST PROPERTY DOES NOT REVERT TO THE SETTLOR OR THE SETTLOR'S
25 SUCCESSORS IN INTEREST.

26 3. THE COURT MAY APPLY CY PRES TO MODIFY OR TERMINATE THE TRUST BY
27 DIRECTING THAT THE TRUST PROPERTY BE APPLIED OR DISTRIBUTED IN WHOLE OR IN
28 PART IN A MANNER CONSISTENT WITH THE SETTLOR'S CHARITABLE PURPOSES.

29 B. A PROVISION IN THE TERMS OF A CHARITABLE TRUST THAT WOULD RESULT IN
30 DISTRIBUTION OF THE TRUST PROPERTY TO A NONCHARITABLE BENEFICIARY PREVAILS
31 OVER THE POWER OF THE COURT UNDER SUBSECTION A TO APPLY CY PRES TO MODIFY OR
32 TERMINATE THE TRUST ONLY IF, WHEN THE PROVISION TAKES EFFECT:

33 1. THE TRUST PROPERTY IS TO REVERT TO THE SETTLOR AND THE SETTLOR IS
34 STILL LIVING.

35 2. FEWER THAN TWENTY-ONE YEARS HAVE ELAPSED SINCE THE DATE OF THE
36 TRUST'S CREATION.

37 14-10414. Modification or termination of uneconomic trust

38 A. AFTER NOTICE TO THE QUALIFIED BENEFICIARIES, THE TRUSTEE OF A TRUST
39 THAT CONSISTS OF TRUST PROPERTY HAVING A TOTAL VALUE OF LESS THAN ONE HUNDRED
40 THOUSAND DOLLARS OR THAT IS UNECONOMIC TO ADMINISTER MAY TERMINATE THE TRUST
41 IF THE TRUSTEE CONCLUDES THAT THE VALUE OF THE TRUST PROPERTY IS INSUFFICIENT
42 TO JUSTIFY THE COST OF ADMINISTRATION. THIS SUBSECTION DOES NOT APPLY TO AN
43 INTERESTED TRUSTEE AS DEFINED IN SECTION 14-11014.

1 B. THE COURT MAY MODIFY OR TERMINATE A TRUST OR REMOVE THE TRUSTEE AND
2 APPOINT A DIFFERENT TRUSTEE IF IT DETERMINES THAT THE VALUE OF THE TRUST
3 PROPERTY IS INSUFFICIENT TO JUSTIFY THE COST OF ADMINISTRATION.

4 C. ON TERMINATION OF A TRUST UNDER THIS SECTION, THE TRUSTEE SHALL
5 DISTRIBUTE THE TRUST PROPERTY IN A MANNER CONSISTENT WITH THE PURPOSES OF THE
6 TRUST.

7 D. THIS SECTION DOES NOT APPLY TO AN EASEMENT FOR CONSERVATION OR
8 PRESERVATION.

9 14-10415. Reformation to correct mistakes

10 THE COURT MAY REFORM THE TERMS OF A TRUST, EVEN IF UNAMBIGUOUS, TO
11 CONFORM THE TERMS TO THE SETTLOR'S INTENTION IF IT IS PROVED BY CLEAR AND
12 CONVINCING EVIDENCE THAT BOTH THE SETTLOR'S INTENT AND THE TERMS OF THE TRUST
13 WERE AFFECTED BY A MISTAKE OF FACT OR LAW, WHETHER IN EXPRESSION OR
14 INDUCEMENT.

15 14-10416. Modification to achieve settlor's tax objectives

16 TO ACHIEVE THE SETTLOR'S TAX OBJECTIVES, THE COURT MAY MODIFY THE TERMS
17 OF A TRUST IN A MANNER THAT IS NOT CONTRARY TO THE SETTLOR'S PROBABLE
18 INTENTION. THE COURT MAY PROVIDE THAT THE MODIFICATION HAS RETROACTIVE
19 EFFECT.

20 14-10417. Combination and division of trusts

21 UNLESS THE TRUST INSTRUMENT PROVIDES THAT NOTICE IS NOT REQUIRED, AFTER
22 NOTICE TO THE QUALIFIED BENEFICIARIES, A TRUSTEE MAY COMBINE TWO OR MORE
23 TRUSTS INTO A SINGLE TRUST OR DIVIDE A TRUST INTO TWO OR MORE SEPARATE
24 TRUSTS, IF THE RESULT DOES NOT IMPAIR RIGHTS OF ANY BENEFICIARY OR ADVERSELY
25 AFFECT ACHIEVEMENT OF THE PURPOSES OF THE TRUST.

26 ARTICLE 5. CREDITORS' CLAIMS;

27 SPENDTHRIFT AND DISCRETIONARY TRUSTS

28 14-10501. Rights of beneficiary's creditor or assignee;
29 exception

30 A. THE COURT MAY AUTHORIZE A CREDITOR OR ASSIGNEE OF THE BENEFICIARY
31 TO REACH THE BENEFICIARY'S INTEREST BY ATTACHMENT OF PRESENT OR FUTURE
32 DISTRIBUTIONS TO OR FOR THE BENEFIT OF THE BENEFICIARY OR BY OTHER MEANS. THE
33 COURT MAY LIMIT THE AWARD TO SUCH RELIEF AS IS APPROPRIATE UNDER THE
34 CIRCUMSTANCES.

35 B. THIS SECTION DOES NOT APPLY AND A TRUSTEE HAS NO LIABILITY TO ANY
36 CREDITOR OF A BENEFICIARY FOR ANY DISTRIBUTIONS MADE TO OR FOR THE BENEFIT OF
37 THE BENEFICIARY TO THE EXTENT A BENEFICIARY'S INTEREST IS PROTECTED BY A
38 SPENDTHRIFT PROVISION OR IS A DISCRETIONARY TRUST INTEREST REFERRED TO IN
39 SECTION 14-10504.

40 14-10502. Spendthrift provision

41 A. A SPENDTHRIFT PROVISION IS VALID ONLY IF IT RESTRAINS EITHER
42 VOLUNTARY OR INVOLUNTARY TRANSFER OF A BENEFICIARY'S INTEREST.

43 B. A TERM OF A TRUST PROVIDING THAT THE INTEREST OF A BENEFICIARY IS
44 HELD SUBJECT TO A SPENDTHRIFT TRUST, OR WORDS OF SIMILAR IMPORT, IS

1 SUFFICIENT TO RESTRAIN BOTH VOLUNTARY AND INVOLUNTARY TRANSFER OF THE
2 BENEFICIARY'S INTEREST.

3 C. A BENEFICIARY MAY NOT TRANSFER AN INTEREST IN A TRUST IN VIOLATION
4 OF A VALID SPENDTHRIFT PROVISION AND, EXCEPT AS OTHERWISE PROVIDED IN THIS
5 ARTICLE, A CREDITOR OR ASSIGNEE OF THE BENEFICIARY MAY NOT ATTACH, GARNISH,
6 EXECUTE ON OR OTHERWISE REACH THE INTEREST OR A DISTRIBUTION BY THE TRUSTEE
7 BEFORE ITS RECEIPT BY THE BENEFICIARY.

8 14-10503. Exceptions to spendthrift provision; definition

9 A. EVEN IF A TRUST CONTAINS A SPENDTHRIFT PROVISION, A BENEFICIARY'S
10 CHILD WHO HAS A JUDGMENT OR COURT ORDER AGAINST THE BENEFICIARY FOR SUPPORT
11 OR MAINTENANCE, OR A JUDGMENT CREDITOR WHO HAS PROVIDED SERVICES RELATING TO
12 THE PROTECTION OF A BENEFICIARY'S INTEREST IN THE TRUST, MAY OBTAIN FROM A
13 COURT AN ORDER ATTACHING PRESENT OR FUTURE DISTRIBUTIONS TO OR FOR THE
14 BENEFIT OF THE BENEFICIARY ONLY FOR THESE MATTERS.

15 B. THE EXCEPTION PRESCRIBED IN SUBSECTION A IS UNENFORCEABLE AGAINST A
16 SPECIAL NEEDS TRUST.

17 C. A SPENDTHRIFT PROVISION IS UNENFORCEABLE AGAINST A CLAIM OF THIS
18 STATE OR THE UNITED STATES ONLY TO THE EXTENT A STATUTE OF THIS STATE OR
19 FEDERAL LAW SO PROVIDES.

20 D. FOR THE PURPOSES OF THIS SECTION, "CHILD" INCLUDES ANY PERSON FOR
21 WHOM AN ORDER OR JUDGMENT FOR CHILD SUPPORT HAS BEEN VALIDLY ENTERED IN THIS
22 OR ANOTHER STATE.

23 14-10504. Discretionary trusts; effect of standard; definition

24 A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, WHETHER OR NOT
25 A TRUST CONTAINS A SPENDTHRIFT PROVISION, A CREDITOR OF A BENEFICIARY MAY NOT
26 COMPEL A DISTRIBUTION THAT IS SUBJECT TO THE TRUSTEE'S DISCRETION, EVEN IF
27 EITHER:

28 1. THE DISCRETION IS EXPRESSED IN THE FORM OF A STANDARD OF
29 DISTRIBUTION.

30 2. THE TRUSTEE HAS NOT COMPLIED WITH THE APPLICABLE STANDARD OF
31 DISTRIBUTION OR HAS ABUSED THE DISCRETION REGARDING DISTRIBUTIONS.

32 B. TO THE EXTENT A TRUSTEE HAS NOT COMPLIED WITH THE APPLICABLE
33 STANDARD OF DISTRIBUTION OR HAS ABUSED THE DISCRETION REGARDING
34 DISTRIBUTIONS:

35 1. EXCEPT AS PROVIDED IN SECTION 14-10503, A DISTRIBUTION MAY BE
36 ORDERED BY THE COURT TO SATISFY A JUDGMENT OR COURT ORDER AGAINST THE
37 BENEFICIARY FOR SUPPORT OR MAINTENANCE OF THE BENEFICIARY'S CHILD.

38 2. THE COURT SHALL DIRECT THE TRUSTEE TO PAY TO THE CHILD AN AMOUNT AS
39 IS EQUITABLE UNDER THE CIRCUMSTANCES BUT NOT MORE THAN THE AMOUNT THE TRUSTEE
40 WOULD HAVE BEEN REQUIRED TO DISTRIBUTE TO OR FOR THE BENEFIT OF THE
41 BENEFICIARY HAD THE TRUSTEE COMPLIED WITH THE STANDARD OR NOT ABUSED THE
42 DISCRETION.

1 C. THIS SECTION DOES NOT LIMIT THE RIGHT OF A BENEFICIARY TO MAINTAIN
2 A JUDICIAL PROCEEDING AGAINST A TRUSTEE FOR AN ABUSE OF DISCRETION OR FAILURE
3 TO COMPLY WITH A STANDARD FOR DISTRIBUTION, PROVIDED THAT THIS RIGHT MAY NOT
4 BE EXERCISED BY A CREDITOR OF THE BENEFICIARY.

5 D. WHETHER OR NOT A TRUST CONTAINS A SPENDTHRIFT PROVISION:

6 1. A CREDITOR OF A TRUST BENEFICIARY MAY NOT COMPEL A DISTRIBUTION
7 FROM INSURANCE PROCEEDS PAYABLE TO THE TRUSTEE AS BENEFICIARY TO THE EXTENT
8 STATE LAW EXEMPTS SUCH INSURANCE PROCEEDS FROM CREDITORS' CLAIMS IF IT HAD
9 BEEN PAID DIRECTLY TO THE TRUST BENEFICIARY.

10 2. TO THE EXTENT THAT UNDER ARIZONA LAW LIFE INSURANCE PROCEEDS,
11 POLICY CASH SURRENDER VALUES OR OTHER DISTRIBUTIONS OR PAYMENTS ARE EXEMPT
12 FROM ATTACHMENT OR GARNISHMENT BY, EXECUTION ON OR OTHERWISE THE REACH OF
13 CREDITORS, IF THE DEATH BENEFIT IS PAYABLE TO AN INDIVIDUAL BENEFICIARY, THE
14 LIFE INSURANCE PROCEEDS, POLICY CASH SURRENDER VALUES OR OTHER DISTRIBUTIONS
15 OR PAYMENTS ARE ALSO EXEMPT FROM ATTACHMENT OR GARNISHMENT BY, EXECUTION ON
16 OR OTHERWISE THE REACH OF CREDITORS IF PAYABLE TO A TRUST FOR THAT
17 INDIVIDUAL.

18 E. A CREDITOR OF A BENEFICIARY, WHETHER OR NOT THE BENEFICIARY IS ALSO
19 A TRUSTEE OR COTRUSTEE, MAY NOT REACH THE BENEFICIARY'S BENEFICIAL INTEREST
20 OR OTHERWISE COMPEL A DISTRIBUTION IF EITHER THE TRUSTEE'S DISCRETION TO MAKE
21 DISTRIBUTIONS FOR THE TRUSTEE'S OWN BENEFIT IS PURELY DISCRETIONARY OR IS
22 LIMITED BY AN ASCERTAINABLE STANDARD, INCLUDING A STANDARD RELATING TO THE
23 BENEFICIARY'S HEALTH, EDUCATION, SUPPORT OR MAINTENANCE OR SIMILAR LANGUAGE
24 WITHIN THE MEANING OF SECTION 2041(b)(1)(A) OF THE INTERNAL REVENUE CODE.

25 F. FOR THE PURPOSES OF THIS SECTION, "CHILD" INCLUDES ANY PERSON FOR
26 WHOM AN ORDER OR JUDGMENT FOR CHILD SUPPORT HAS BEEN ENTERED IN THIS OR
27 ANOTHER STATE.

28 14-10505. Creditor's claim against settlor

29 A. WHETHER OR NOT THE TERMS OF A TRUST CONTAIN A SPENDTHRIFT
30 PROVISION, THE FOLLOWING RULES APPLY:

31 1. DURING THE LIFETIME OF THE SETTLOR, THE PROPERTY OF A REVOCABLE
32 TRUST IS SUBJECT TO CLAIMS OF THE SETTLOR'S CREDITORS. IF A TRUST HAS MORE
33 THAN ONE SETTLOR OR CONTRIBUTOR, THE AMOUNT THE CREDITOR OR ASSIGNEE OF A
34 PARTICULAR SETTLOR MAY REACH MAY NOT EXCEED THE SETTLOR'S INTEREST IN THE
35 PORTION OF THE TRUST ATTRIBUTABLE TO THAT SETTLOR'S CONTRIBUTION. THIS
36 PARAGRAPH DOES NOT ABROGATE OTHERWISE APPLICABLE LAWS RELATING TO COMMUNITY
37 PROPERTY.

38 2. SUBJECT TO THE REQUIREMENTS OF THIS SECTION, WITH RESPECT TO AN
39 IRREVOCABLE TRUST, A CREDITOR OR ASSIGNEE OF THE SETTLOR MAY REACH THE
40 MAXIMUM AMOUNT THAT CAN BE DISTRIBUTED TO OR FOR THE SETTLOR'S BENEFIT. IF A
41 TRUST HAS MORE THAN ONE SETTLOR, THE AMOUNT THE CREDITOR OR ASSIGNEE OF A
42 PARTICULAR SETTLOR MAY REACH MAY NOT EXCEED THE SETTLOR'S INTEREST IN THE
43 PORTION OF THE TRUST ATTRIBUTABLE TO THAT SETTLOR'S CONTRIBUTION. THIS
44 PARAGRAPH DOES NOT APPLY TO ANY TRUST FROM WHICH ANY DISTRIBUTION TO THE
45 SETTLOR CAN BE MADE PURSUANT TO THE EXERCISE OF A POWER OF APPOINTMENT HELD

1 BY A THIRD PARTY OR ABROGATE OTHERWISE APPLICABLE LAWS RELATING TO COMMUNITY
2 PROPERTY. A CREDITOR OF A SETTLOR:

3 (a) SHALL NOT REACH ANY TRUST PROPERTY BASED ON A TRUSTEE'S, TRUST
4 PROTECTOR'S OR THIRD PARTY'S POWER, WHETHER OR NOT DISCRETIONARY, TO PAY OR
5 REIMBURSE THE SETTLOR FOR ANY INCOME TAX ON TRUST INCOME OR TRUST PRINCIPAL
6 THAT IS PAYABLE BY THE SETTLOR UNDER THE LAW IMPOSING THE TAX OR TO PAY THE
7 TAX DIRECTLY TO ANY TAXING AUTHORITY.

8 (b) IS NOT ENTITLED TO ANY PAYMENT OR REIMBURSEMENT THAT IS TO BE MADE
9 DIRECTLY TO ANY TAXING AUTHORITY.

10 (c) SHALL NOT REACH OR COMPEL DISTRIBUTIONS TO OR FOR THE BENEFIT OF
11 THE BENEFICIARY OF A SPECIAL NEEDS TRUST.

12 3. AFTER THE DEATH OF A SETTLOR, AND SUBJECT TO THE SETTLOR'S RIGHT TO
13 DIRECT THE SOURCE FROM WHICH LIABILITIES WILL BE PAID, THE PROPERTY OF A
14 TRUST THAT WAS REVOCABLE AT THE SETTLOR'S DEATH IS SUBJECT TO CLAIMS OF THE
15 SETTLOR'S CREDITORS, COSTS OF ADMINISTRATION OF THE SETTLOR'S ESTATE, THE
16 EXPENSES OF THE SETTLOR'S FUNERAL AND DISPOSAL OF REMAINS AND STATUTORY
17 ALLOWANCES TO A SURVIVING SPOUSE AND CHILDREN TO THE EXTENT THE SETTLOR'S
18 PROBATE ESTATE IS INADEQUATE TO SATISFY THOSE CLAIMS, COSTS, EXPENSES AND
19 ALLOWANCES, EXCEPT TO THE EXTENT THAT STATE OR FEDERAL LAW EXEMPTS ANY
20 PROPERTY OF THE TRUST FROM THESE CLAIMS, COSTS, EXPENSES OR ALLOWANCES.

21 B. FOR THE PURPOSES OF THIS SECTION:

22 1. DURING THE PERIOD THE POWER MAY BE EXERCISED, THE HOLDER OF A POWER
23 OF WITHDRAWAL IS TREATED IN THE SAME MANNER AS THE SETTLOR OF A REVOCABLE
24 TRUST TO THE EXTENT OF THE PROPERTY SUBJECT TO THE POWER.

25 2. ON THE LAPSE, RELEASE OR WAIVER OF A POWER OF WITHDRAWAL, THE
26 HOLDER IS TREATED AS THE SETTLOR OF THE TRUST ONLY TO THE EXTENT THE VALUE OF
27 THE PROPERTY AFFECTED BY THE LAPSE, RELEASE OR WAIVER EXCEEDS THE GREATER OF
28 THE AMOUNT SPECIFIED IN SECTION 2041(b)(2) OR 2514(e) OF THE INTERNAL REVENUE
29 CODE, OR SECTION 2503(b) OF THE INTERNAL REVENUE CODE. ON THE LAPSE, RELEASE
30 OR WAIVER OF A POWER OF WITHDRAWAL IN THE CASE OF A TRUST CREATED UNDER
31 SECTION 2503(c) OF THE INTERNAL REVENUE CODE, THE HOLDER WILL NOT BE TREATED
32 AS THE SETTLOR OF THE TRUST.

33 C. FOR THE PURPOSES OF THIS SECTION, A TRUST SETTLED OR ESTABLISHED BY
34 A CORPORATION, PROFESSIONAL CORPORATION, PARTNERSHIP, LIMITED LIABILITY
35 COMPANY, GOVERNMENTAL ENTITY, TRUST, FOUNDATION OR OTHER ENTITY IS NOT DEEMED
36 TO BE SETTLED OR ESTABLISHED BY ITS DIRECTORS, OFFICERS, SHAREHOLDERS,
37 PARTNERS, MEMBERS, MANAGERS, EMPLOYEES, BENEFICIARIES OR AGENTS.

38 D. FOR THE PURPOSES OF THIS SECTION, AMOUNTS CONTRIBUTED TO A TRUST BY
39 A CORPORATION, PROFESSIONAL CORPORATION, PARTNERSHIP, LIMITED LIABILITY
40 COMPANY, GOVERNMENTAL ENTITY, TRUST, FOUNDATION OR OTHER ENTITY ARE NOT
41 DEEMED TO HAVE BEEN CONTRIBUTED BY ITS DIRECTORS, OFFICERS, SHAREHOLDERS,
42 PARTNERS, EMPLOYEES, BENEFICIARIES OR AGENTS. POWERS, DUTIES OR
43 RESPONSIBILITIES GRANTED TO OR RESERVED BY THE SETTLOR PURSUANT TO THE TRUST
44 AND ANY ACTIONS OR OMISSIONS TAKEN PURSUANT TO THE TRUST ARE DEEMED TO BE THE
45 POWERS, RESPONSIBILITIES, DUTIES, ACTIONS OR OMISSIONS OF THE SETTLOR AND NOT

1 THOSE OF ITS DIRECTORS, OFFICERS, SHAREHOLDERS, PARTNERS, MEMBERS, MANAGERS,
2 EMPLOYEES, BENEFICIARIES OR AGENTS.

3 E. FOR THE PURPOSES OF THIS SECTION, AMOUNTS CONTRIBUTED TO AN INTER
4 VIVOS MARITAL TRUST THAT IS TREATED AS QUALIFIED TERMINABLE INTEREST PROPERTY
5 UNDER SECTION 2523(f) OF THE INTERNAL REVENUE CODE OR TO AN INTER VIVOS
6 MARITAL TRUST THAT IS TREATED AS A GENERAL POWER OF APPOINTMENT TRUST UNDER
7 SECTION 2523(e) OF THE INTERNAL REVENUE CODE AND OVER WHICH THE BENEFICIARY
8 HOLDS A LIMITED POWER OF APPOINTMENT OR A GENERAL POWER OF APPOINTMENT
9 EXERCISABLE IN FAVOR OF THE HOLDER'S ESTATE, OR BOTH, ARE NOT DEEMED TO HAVE
10 BEEN CONTRIBUTED BY THE SETTLOR EVEN IF THE SETTLOR IS A BENEFICIARY OF THE
11 TRUST FOLLOWING THE DEATH OF THE BENEFICIARY'S SPOUSE.

12 F. SUBSECTIONS C AND D DO NOT APPLY TO:

13 1. A TRUST THAT HAS NO VALID BUSINESS PURPOSE AND THAT HAS AS ITS
14 PRINCIPAL PURPOSE THE EVASION OF THE CLAIMS OF THE CREDITORS OF THE PERSONS
15 OR ENTITIES LISTED IN THOSE SUBSECTIONS.

16 2. A TRUST THAT WOULD BE TREATED AS A GRANTOR TRUST PURSUANT TO
17 SECTIONS 671 THROUGH 679 OF THE INTERNAL REVENUE CODE. THIS PARAGRAPH DOES
18 NOT APPLY TO A QUALIFIED SUBCHAPTER S TRUST THAT IS TREATED AS A GRANTOR
19 TRUST SOLELY BY APPLICATION OF SECTION 1361(d) OF THE INTERNAL REVENUE CODE.

20 14-10506. Overdue distribution; definition

21 A. WHETHER OR NOT A TRUST CONTAINS A SPENDTHRIFT PROVISION, A CREDITOR
22 OR ASSIGNEE OF A BENEFICIARY MAY REACH A MANDATORY DISTRIBUTION OF INCOME OR
23 PRINCIPAL, INCLUDING A DISTRIBUTION ON TERMINATION OF THE TRUST, IF THE
24 TRUSTEE HAS NOT MADE THE DISTRIBUTION TO THE BENEFICIARY WITHIN A REASONABLE
25 TIME AFTER THE MANDATED DISTRIBUTION DATE UNLESS THE TERMS OF THE TRUST
26 EXPRESSLY AUTHORIZE THE TRUSTEE TO DELAY THE DISTRIBUTION TO PROTECT THE
27 BENEFICIARY'S INTEREST IN THE DISTRIBUTION.

28 B. FOR THE PURPOSES OF THIS SECTION, "MANDATORY DISTRIBUTION" MEANS A
29 DISTRIBUTION OF INCOME OR PRINCIPAL THAT THE TRUSTEE IS REQUIRED TO MAKE TO A
30 BENEFICIARY UNDER THE TERMS OF THE TRUST, INCLUDING A DISTRIBUTION ON
31 TERMINATION OF THE TRUST. MANDATORY DISTRIBUTION DOES NOT INCLUDE A
32 DISTRIBUTION THAT IS SUBJECT TO THE EXERCISE OF THE TRUSTEE'S DISCRETION EVEN
33 IF:

34 1. THE DISCRETION IS EXPRESSED IN THE FORM OF A STANDARD OF
35 DISTRIBUTION.

36 2. THE TERMS OF THE TRUST AUTHORIZING A DISTRIBUTION COUPLE LANGUAGE
37 OF DISCRETION WITH LANGUAGE OF DIRECTION.

38 14-10507. Personal obligations of trustee

39 TRUST PROPERTY IS NOT SUBJECT TO PERSONAL OBLIGATIONS OF THE TRUSTEE,
40 EVEN IF THE TRUSTEE BECOMES INSOLVENT OR BANKRUPT.

ARTICLE 6. REVOCABLE TRUSTS

14-10601. Blank

14-10602. Revocation or amendment of revocable trust

A. UNLESS THE TERMS OF A TRUST EXPRESSLY PROVIDE THAT THE TRUST IS IRREVOCABLE, A SETTLOR MAY REVOKE OR AMEND THE TRUST SUBJECT TO ANY LIMITATIONS PRESCRIBED IN THE TERMS OF THE TRUST.

B. IF A REVOCABLE TRUST IS CREATED OR FUNDED BY MORE THAN ONE SETTLOR:

1. TO THE EXTENT THE TRUST CONSISTS OF COMMUNITY PROPERTY, THE TRUST MAY BE REVOKED BY EITHER SPOUSE ACTING ALONE AS TO THAT SPOUSE'S SHARE OF THE COMMUNITY PROPERTY BUT MAY BE AMENDED ONLY BY JOINT ACTION OF BOTH SPOUSES.

2. TO THE EXTENT THE TRUST CONSISTS OF PROPERTY OTHER THAN COMMUNITY PROPERTY, EACH SETTLOR MAY REVOKE OR AMEND THE TRUST WITH REGARD THE PORTION OF THE TRUST PROPERTY ATTRIBUTABLE TO THAT SETTLOR'S CONTRIBUTION.

C. THE SETTLOR MAY REVOKE OR AMEND A REVOCABLE TRUST EITHER:

1. BY SUBSTANTIAL COMPLIANCE WITH A METHOD PROVIDED IN THE TERMS OF THE TRUST.

2. IF THE TERMS OF THE TRUST DO NOT PROVIDE A METHOD OR THE METHOD PROVIDED IN THE TERMS IS NOT EXPRESSLY MADE EXCLUSIVE, BY EITHER:

(a) A LATER WILL OR CODICIL THAT EXPRESSLY REFERS TO THE TRUST OR SPECIFICALLY DEVISES PROPERTY THAT WOULD OTHERWISE HAVE PASSED ACCORDING TO THE TERMS OF THE TRUST.

(b) ANY OTHER WRITING SIGNED BY THE SETTLOR MANIFESTING CLEAR AND CONVINCING EVIDENCE OF THE SETTLOR'S INTENT.

D. ON REVOCATION OF A REVOCABLE TRUST, THE TRUSTEE SHALL DELIVER THE TRUST PROPERTY AS THE SETTLOR DIRECTS.

E. A SETTLOR'S POWERS WITH RESPECT TO REVOCATION, AMENDMENT OR DISTRIBUTION OF TRUST PROPERTY MAY BE EXERCISED BY AN AGENT UNDER A POWER OF ATTORNEY ONLY TO THE EXTENT EXPRESSLY AUTHORIZED BY THE TERMS OF THE TRUST OR, IF THE TERMS OF THE TRUST DO NOT PROHIBIT AN AGENT FROM EXERCISING POWERS ON BEHALF OF THE SETTLOR, TO THE EXTENT EXPRESSLY AUTHORIZED UNDER THE POWER OF ATTORNEY. IF AN AGENT IS NOT SO AUTHORIZED AND THE TERMS OF THE TRUST DO NOT PROHIBIT A CONSERVATOR FROM EXERCISING POWERS ON BEHALF OF A SETTLOR, A SETTLOR'S POWER TO REVOKE, AMEND OR DISTRIBUTE MAY BE EXERCISED BY THE SETTLOR'S CONSERVATOR WITH THE APPROVAL OF THE COURT SUPERVISING THE CONSERVATORSHIP OR BY THE SETTLOR'S GUARDIAN WITH THE APPROVAL OF THE COURT SUPERVISING THE GUARDIANSHIP IF AN AGENT IS NOT SO AUTHORIZED AND A CONSERVATOR HAS NOT BEEN APPOINTED.

F. A TRUSTEE WHO DOES NOT HAVE ACTUAL KNOWLEDGE THAT A TRUST HAS BEEN REVOKED OR AMENDED IS NOT LIABLE TO THE SETTLOR OR SETTLOR'S SUCCESSORS IN INTEREST FOR DISTRIBUTIONS MADE AND OTHER ACTIONS TAKEN ON THE ASSUMPTION THAT THE TRUST HAD NOT BEEN AMENDED OR REVOKED.

14-10603. Settlor's powers; powers of withdrawal

A. WHILE A TRUST IS REVOCABLE BY THE SETTLOR, THE RIGHTS OF THE BENEFICIARIES ARE SUBJECT TO THE CONTROL OF, AND THE DUTIES OF THE TRUSTEE ARE OWED EXCLUSIVELY TO, THE SETTLOR.

1 B. DURING THE PERIOD A POWER OF WITHDRAWAL MAY BE EXERCISED, THE
2 HOLDER OF THE POWER HAS THE RIGHTS OF A SETTLOR OF A REVOCABLE TRUST UNDER
3 THIS SECTION TO THE EXTENT OF THE PROPERTY SUBJECT TO THE POWER.

4 14-10604. Limitation on actions contesting validity or
5 revocable trust; distribution of trust property

6 A. A PERSON MAY COMMENCE A JUDICIAL PROCEEDING TO CONTEST THE VALIDITY
7 OF A TRUST THAT WAS REVOCABLE AT THE SETTLOR'S DEATH WITHIN THE EARLIER OF:

8 1. ONE YEAR AFTER THE SETTLOR'S DEATH.

9 2. FOUR MONTHS AFTER THE TRUSTEE SENT THE PERSON A COPY OF THE TRUST
10 INSTRUMENT AND A NOTICE INFORMING THE PERSON OF THE TRUST'S EXISTENCE, OF THE
11 TRUSTEE'S NAME AND ADDRESS AND OF THE TIME ALLOWED FOR COMMENCING A
12 PROCEEDING.

13 B. ON THE DEATH OF THE SETTLOR OF A TRUST THAT WAS REVOCABLE AT THE
14 SETTLOR'S DEATH, THE TRUSTEE MAY PROCEED TO DISTRIBUTE THE TRUST PROPERTY IN
15 ACCORDANCE WITH THE TERMS OF THE TRUST. THE TRUSTEE IS NOT SUBJECT TO
16 LIABILITY FOR DOING SO UNLESS EITHER:

17 1. THE TRUSTEE HAS ACTUAL KNOWLEDGE OF A PENDING JUDICIAL PROCEEDING
18 CONTESTING THE VALIDITY OF THE TRUST.

19 2. A POTENTIAL CONTESTANT HAS NOTIFIED THE TRUSTEE IN WRITING OF A
20 POSSIBLE JUDICIAL PROCEEDING TO CONTEST THE TRUST AND A JUDICIAL PROCEEDING
21 IS COMMENCED WITHIN SIXTY DAYS AFTER THE CONTESTANT SENT THE NOTIFICATION.

22 C. A BENEFICIARY OF A TRUST THAT IS DETERMINED TO HAVE BEEN INVALID IS
23 LIABLE TO RETURN ANY DISTRIBUTION RECEIVED EXCEPT TO THE EXTENT THAT THE
24 BENEFICIARY IS A BONA FIDE PURCHASER FOR VALUE WITHOUT NOTICE.

25 ARTICLE 7. OFFICE OF TRUSTEE

26 14-10701. Accepting or declining trusteeship

27 A. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION C, A PERSON DESIGNATED
28 AS TRUSTEE ACCEPTS THE TRUSTEESHIP EITHER:

29 1. BY SUBSTANTIALLY COMPLYING WITH A METHOD OF ACCEPTANCE PROVIDED IN
30 THE TERMS OF THE TRUST.

31 2. IF THE TERMS OF THE TRUST DO NOT PROVIDE A METHOD OR THE METHOD
32 PROVIDED IN THE TERMS IS NOT EXPRESSLY MADE EXCLUSIVE, BY ACCEPTING DELIVERY
33 OF THE TRUST PROPERTY, EXERCISING POWERS OR PERFORMING DUTIES AS TRUSTEE OR
34 OTHERWISE INDICATING ACCEPTANCE OF THE TRUSTEESHIP.

35 B. A PERSON DESIGNATED AS TRUSTEE WHO HAS NOT YET ACCEPTED THE
36 TRUSTEESHIP MAY REJECT THE TRUSTEESHIP. A DESIGNATED TRUSTEE WHO DOES NOT
37 ACCEPT THE TRUSTEESHIP WITHIN A REASONABLE TIME AFTER KNOWING OF THE
38 DESIGNATION IS DEEMED TO HAVE REJECTED THE TRUSTEESHIP.

39 C. A PERSON DESIGNATED AS TRUSTEE, WITHOUT ACCEPTING THE TRUSTEESHIP,
40 MAY:

41 1. ACT TO PRESERVE THE TRUST PROPERTY IF, WITHIN A REASONABLE TIME
42 AFTER ACTING, THE PERSON SENDS A REJECTION OF THE TRUSTEESHIP TO THE SETTLOR
43 OR, IF THE SETTLOR IS DEAD OR LACKS CAPACITY, TO A QUALIFIED BENEFICIARY.

44 2. INSPECT OR INVESTIGATE TRUST PROPERTY TO DETERMINE POTENTIAL
45 LIABILITY UNDER ENVIRONMENTAL OR OTHER LAW OR FOR ANY OTHER PURPOSE.

14-10702. Trustee's bond

A. A TRUSTEE SHALL GIVE BOND TO SECURE PERFORMANCE OF THE TRUSTEE'S DUTIES ONLY IF THE COURT FINDS THAT A BOND IS NEEDED TO PROTECT THE INTERESTS OF THE BENEFICIARIES OR IS REQUIRED BY THE TERMS OF THE TRUST AND THE COURT HAS NOT DISPENSED WITH THE REQUIREMENT.

B. THE COURT MAY SPECIFY THE AMOUNT OF A BOND, ITS LIABILITIES AND WHETHER SURETIES ARE NECESSARY. THE COURT MAY MODIFY OR TERMINATE A BOND AT ANY TIME.

C. NOTWITHSTANDING THE TERMS OF THE TRUST, THE FOLLOWING ARE NOT REQUIRED TO GIVE A BOND:

1. A NATIONAL BANKING ASSOCIATION.
2. A HOLDER OF A BANKING PERMIT UNDER THE LAWS OF THIS STATE.
3. A SAVINGS AND LOAN ASSOCIATION AUTHORIZED TO CONDUCT TRUST BUSINESS IN THIS STATE.
4. A TITLE INSURANCE COMPANY QUALIFIED TO DO BUSINESS UNDER THE LAWS OF THIS STATE.
5. A TRUST COMPANY HOLDING A CERTIFICATE TO ENGAGE IN TRUST BUSINESS FROM THE STATE SUPERINTENDENT OF BANKS.
6. THE PUBLIC FIDUCIARY.

14-10703. Cotrustees

A. COTRUSTEES WHO ARE UNABLE TO REACH A UNANIMOUS DECISION MAY ACT BY MAJORITY DECISION.

B. IF A VACANCY OCCURS IN A COTRUSTEESHIP, THE REMAINING COTRUSTEES MAY ACT FOR THE TRUST.

C. A COTRUSTEE MUST PARTICIPATE IN THE PERFORMANCE OF A TRUSTEE'S FUNCTION UNLESS THE COTRUSTEE IS UNAVAILABLE TO PERFORM THE FUNCTION BECAUSE OF ABSENCE, ILLNESS, DISQUALIFICATION UNDER OTHER LAW OR OTHER TEMPORARY INCAPACITY OR THE COTRUSTEE HAS PROPERLY DELEGATED THE PERFORMANCE OF THE FUNCTION TO ANOTHER TRUSTEE.

D. IF A COTRUSTEE IS UNAVAILABLE TO PERFORM DUTIES BECAUSE OF ABSENCE, ILLNESS, DISQUALIFICATION UNDER OTHER LAW OR OTHER TEMPORARY INCAPACITY, AND PROMPT ACTION IS NECESSARY TO ACHIEVE THE PURPOSES OF THE TRUST OR TO AVOID INJURY TO THE TRUST PROPERTY, THE REMAINING COTRUSTEE OR A MAJORITY OF THE REMAINING COTRUSTEES MAY ACT FOR THE TRUST.

E. A TRUSTEE MAY DELEGATE TO A COTRUSTEE THE PERFORMANCE OF A FUNCTION UNLESS THE TERMS OF THE TRUST PROVIDE THAT THE TRUSTEES PERFORM JOINTLY. UNLESS A DELEGATION WAS IRREVOCABLE, A TRUSTEE MAY REVOKE A DELEGATION PREVIOUSLY MADE.

F. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION G, A TRUSTEE WHO DOES NOT JOIN IN AN ACTION OF ANOTHER TRUSTEE IS NOT LIABLE FOR THE ACTION.

G. EACH TRUSTEE SHALL EXERCISE REASONABLE CARE TO:

1. PREVENT A COTRUSTEE FROM COMMITTING A MATERIAL BREACH OF TRUST.
2. COMPEL A COTRUSTEE TO REDRESS A MATERIAL BREACH OF TRUST.

1 H. A DISSENTING TRUSTEE WHO JOINS IN AN ACTION AT THE DIRECTION OF THE
2 MAJORITY OF THE TRUSTEES AND WHO NOTIFIED ANY COTRUSTEE OF THE DISSENT AT OR
3 BEFORE THE TIME OF THE ACTION IS NOT LIABLE FOR THE ACTION UNLESS THE ACTION
4 IS A MATERIAL BREACH OF TRUST.

5 14-10704. Vacancy in trusteeship; appointment of successor

6 A. A VACANCY IN A TRUSTEESHIP OCCURS IF:

- 7 1. A PERSON DESIGNATED AS TRUSTEE REJECTS THE TRUSTEESHIP.
- 8 2. A PERSON DESIGNATED AS TRUSTEE CANNOT BE IDENTIFIED OR DOES NOT
9 EXIST.
- 10 3. A TRUSTEE RESIGNS.
- 11 4. A TRUSTEE IS DISQUALIFIED OR REMOVED.
- 12 5. A TRUSTEE DIES.
- 13 6. A GUARDIAN OR CONSERVATOR IS APPOINTED FOR AN INDIVIDUAL SERVING AS
14 TRUSTEE.

15 B. IF ONE OR MORE COTRUSTEES REMAIN IN OFFICE, A VACANCY IN A
16 TRUSTEESHIP NEED NOT BE FILLED. A VACANCY IN A TRUSTEESHIP MUST BE FILLED IF
17 THE TRUST HAS NO REMAINING TRUSTEE.

18 C. A VACANCY IN A TRUSTEESHIP OF A NONCHARITABLE TRUST THAT IS
19 REQUIRED TO BE FILLED MUST BE FILLED IN THE FOLLOWING ORDER OF PRIORITY:

- 20 1. BY A PERSON DESIGNATED IN THE TERMS OF THE TRUST TO ACT AS
21 SUCCESSOR TRUSTEE OR A PERSON WHO IS APPOINTED BY A PERSON WHO HAS AUTHORITY
22 IN THE TRUST INSTRUMENT TO APPOINT A SUCCESSOR TRUSTEE.
- 23 2. BY A PERSON APPOINTED BY UNANIMOUS AGREEMENT OF THE QUALIFIED
24 BENEFICIARIES.

25 3. BY A PERSON APPOINTED BY THE COURT.

26 D. A VACANCY IN A TRUSTEESHIP OF A CHARITABLE TRUST THAT IS REQUIRED
27 TO BE FILLED MUST BE FILLED IN THE FOLLOWING ORDER OF PRIORITY:

- 28 1. BY A PERSON DESIGNATED IN THE TERMS OF THE TRUST TO ACT AS
29 SUCCESSOR TRUSTEE.
- 30 2. BY A PERSON SELECTED BY THE CHARITABLE ORGANIZATIONS EXPRESSLY
31 DESIGNATED TO RECEIVE DISTRIBUTIONS UNDER THE TERMS OF THE TRUST.
- 32 3. BY A PERSON APPOINTED BY THE COURT.

33 E. WHETHER OR NOT A VACANCY IN A TRUSTEESHIP EXISTS OR IS REQUIRED TO
34 BE FILLED, THE COURT MAY APPOINT AN ADDITIONAL TRUSTEE OR SPECIAL FIDUCIARY
35 WHENEVER THE COURT CONSIDERS THE APPOINTMENT NECESSARY FOR THE ADMINISTRATION
36 OF THE TRUST.

37 14-10705. Resignation of trustee

38 A. A TRUSTEE MAY RESIGN EITHER:

39 1. UNLESS THE TRUST INSTRUMENT PROVIDES OTHERWISE, ON AT LEAST THIRTY
40 DAYS' NOTICE TO THE QUALIFIED BENEFICIARIES, THE SETTLOR, IF LIVING, AND ALL
41 COTRUSTEES.

42 2. WITH THE APPROVAL OF THE COURT.

43 B. IN APPROVING A RESIGNATION, THE COURT MAY ISSUE ORDERS AND IMPOSE
44 CONDITIONS REASONABLY NECESSARY FOR THE PROTECTION OF THE TRUST PROPERTY.

1 C. ANY LIABILITY OF A RESIGNING TRUSTEE OR OF ANY SURETIES ON THE
2 TRUSTEE'S BOND FOR ACTS OR OMISSIONS OF THE TRUSTEE IS NOT DISCHARGED OR
3 AFFECTED BY THE TRUSTEE'S RESIGNATION.

4 14-10706. Removal of trustee

5 A. THE SETTLOR, A COTRUSTEE OR A BENEFICIARY MAY REQUEST THE COURT TO
6 REMOVE A TRUSTEE OR A TRUSTEE MAY BE REMOVED BY THE COURT ON ITS OWN
7 INITIATIVE.

8 B. THE COURT MAY REMOVE A TRUSTEE IF:

9 1. THE TRUSTEE HAS COMMITTED A MATERIAL BREACH OF TRUST.

10 2. LACK OF COOPERATION AMONG COTRUSTEES SUBSTANTIALLY IMPAIRS THE
11 ADMINISTRATION OF THE TRUST.

12 3. BECAUSE OF UNFITNESS, UNWILLINGNESS OR PERSISTENT FAILURE OF THE
13 TRUSTEE TO ADMINISTER THE TRUST FOR THE BENEFIT OF THE BENEFICIARIES, THE
14 COURT DETERMINES THAT REMOVAL OF THE TRUSTEE BEST SERVES THE INTERESTS OF THE
15 BENEFICIARIES.

16 4. THERE HAS BEEN A SUBSTANTIAL CHANGE OF CIRCUMSTANCES OR REMOVAL IS
17 REQUESTED BY ALL OF THE QUALIFIED BENEFICIARIES, THE COURT FINDS THAT REMOVAL
18 OF THE TRUSTEE BEST SERVES THE INTERESTS OF ALL OF THE BENEFICIARIES AND IS
19 NOT INCONSISTENT WITH A MATERIAL PURPOSE OF THE TRUST AND A SUITABLE
20 COTRUSTEE OR SUCCESSOR TRUSTEE IS AVAILABLE.

21 C. PENDING A FINAL DECISION ON A REQUEST TO REMOVE A TRUSTEE, OR IN
22 LIEU OF OR IN ADDITION TO REMOVING A TRUSTEE, THE COURT MAY ORDER APPROPRIATE
23 RELIEF UNDER SECTION 14-11001, SUBSECTION B AS MAY BE NECESSARY TO PROTECT
24 THE TRUST PROPERTY OR THE INTERESTS OF THE BENEFICIARIES.

25 14-10707. Delivery of property by former trustee

26 A. UNLESS A COTRUSTEE REMAINS IN OFFICE OR THE COURT OTHERWISE ORDERS,
27 AND UNTIL THE TRUST PROPERTY IS DELIVERED TO A SUCCESSOR TRUSTEE OR OTHER
28 PERSON ENTITLED TO IT, A TRUSTEE WHO HAS RESIGNED OR BEEN REMOVED HAS THE
29 DUTIES OF A TRUSTEE AND THE POWERS NECESSARY TO PROTECT THE TRUST PROPERTY.

30 B. A TRUSTEE WHO HAS RESIGNED OR BEEN REMOVED SHALL PROCEED
31 EXPEDITIOUSLY TO DELIVER THE TRUST PROPERTY IN THE TRUSTEE'S POSSESSION TO
32 THE COTRUSTEE, SUCCESSOR TRUSTEE OR OTHER PERSON ENTITLED TO IT.

33 14-10708. Compensation of trustee

34 A. IF THE TERMS OF A TRUST DO NOT SPECIFY THE TRUSTEE'S COMPENSATION,
35 A TRUSTEE IS ENTITLED TO COMPENSATION THAT IS REASONABLE UNDER THE
36 CIRCUMSTANCES.

37 B. IF THE TERMS OF A TRUST SPECIFY THE TRUSTEE'S COMPENSATION OR REFER
38 TO ANOTHER ASCERTAINABLE SOURCE FOR DETERMINING THAT COMPENSATION, THE
39 TRUSTEE IS ENTITLED TO BE COMPENSATED AS SPECIFIED, BUT THE COURT MAY ALLOW
40 MORE OR LESS COMPENSATION IF EITHER:

41 1. THE DUTIES OF THE TRUSTEE ARE SUBSTANTIALLY DIFFERENT FROM THOSE
42 CONTEMPLATED WHEN THE TRUST WAS CREATED.

43 2. THE COMPENSATION SPECIFIED BY THE TERMS OF THE TRUST WOULD BE
44 UNREASONABLY LOW OR HIGH.

14-10709. Reimbursement of expenses

A. A TRUSTEE IS ENTITLED TO BE REIMBURSED OUT OF THE TRUST PROPERTY, WITH REASONABLE INTEREST, FOR:

1. EXPENSES THAT WERE PROPERLY INCURRED IN THE ADMINISTRATION OF THE TRUST.

2. TO THE EXTENT NECESSARY TO PREVENT UNJUST ENRICHMENT OF THE TRUST, EXPENSES THAT WERE NOT PROPERLY INCURRED IN THE ADMINISTRATION OF THE TRUST.

B. AN ADVANCE BY THE TRUSTEE OF MONEY FOR THE PROTECTION OF THE TRUST GIVES RISE TO A LIEN AGAINST TRUST PROPERTY TO SECURE REIMBURSEMENT WITH REASONABLE INTEREST.

ARTICLE 8. DUTIES AND POWERS OF TRUSTEE AND TRUST PROTECTOR

14-10801. Duty to administer trust

ON ACCEPTANCE OF A TRUSTEESHIP, THE TRUSTEE SHALL ADMINISTER THE TRUST IN GOOD FAITH, IN ACCORDANCE WITH ITS TERMS AND PURPOSES AND THE INTERESTS OF THE BENEFICIARIES AND IN ACCORDANCE WITH THIS CHAPTER.

14-10802. Duty of loyalty

A. A TRUSTEE SHALL ADMINISTER THE TRUST SOLELY IN THE INTERESTS OF THE BENEFICIARIES.

B. SUBJECT TO THE RIGHTS OF PERSONS DEALING WITH OR ASSISTING THE TRUSTEE AS PROVIDED IN SECTION 14-11012, A SALE, ENCUMBRANCE OR OTHER TRANSACTION INVOLVING THE INVESTMENT OR MANAGEMENT OF TRUST PROPERTY ENTERED INTO BY THE TRUSTEE FOR THE TRUSTEE'S OWN PERSONAL ACCOUNT OR THAT IS OTHERWISE AFFECTED BY A CONFLICT BETWEEN THE TRUSTEE'S FIDUCIARY AND PERSONAL INTERESTS IS VOIDABLE BY A BENEFICIARY AFFECTED BY THE TRANSACTION UNLESS EITHER:

1. THE TRANSACTION WAS AUTHORIZED BY THE TERMS OF THE TRUST.

2. THE TRANSACTION WAS APPROVED BY THE COURT.

3. THE BENEFICIARY DID NOT COMMENCE A JUDICIAL PROCEEDING WITHIN THE TIME ALLOWED BY SECTION 14-11005.

4. THE BENEFICIARY CONSENTED TO THE TRUSTEE'S CONDUCT, RATIFIED THE TRANSACTION OR RELEASED THE TRUSTEE IN COMPLIANCE WITH SECTION 14-11009.

5. THE TRANSACTION INVOLVES A CONTRACT ENTERED INTO OR CLAIM ACQUIRED BY THE TRUSTEE BEFORE THE PERSON BECAME OR CONTEMPLATED BECOMING TRUSTEE.

C. A SALE, ENCUMBRANCE OR OTHER TRANSACTION INVOLVING THE INVESTMENT OR MANAGEMENT OF TRUST PROPERTY IS PRESUMED TO BE AFFECTED BY A CONFLICT BETWEEN PERSONAL AND FIDUCIARY INTERESTS IF IT IS ENTERED INTO BY THE TRUSTEE WITH:

1. THE TRUSTEE'S SPOUSE.

2. THE TRUSTEE'S DESCENDANTS, SIBLINGS OR PARENTS OR THEIR SPOUSES.

3. AN AGENT OR ATTORNEY OF THE TRUSTEE.

4. A CORPORATION OR OTHER PERSON OR ENTERPRISE IN WHICH THE TRUSTEE, OR A PERSON THAT OWNS A SIGNIFICANT INTEREST IN THE TRUSTEE, HAS AN INTEREST THAT MIGHT AFFECT THE TRUSTEE'S BEST JUDGMENT.

1 D. A TRANSACTION BETWEEN A TRUSTEE AND A BENEFICIARY THAT DOES NOT
2 CONCERN TRUST PROPERTY BUT THAT OCCURS DURING THE EXISTENCE OF THE TRUST OR
3 WHILE THE TRUSTEE RETAINS SIGNIFICANT INFLUENCE OVER THE BENEFICIARY AND FROM
4 WHICH THE TRUSTEE OBTAINS AN ADVANTAGE IS VOIDABLE BY THE BENEFICIARY UNLESS
5 THE TRUSTEE ESTABLISHES THAT THE TRANSACTION WAS FAIR TO THE BENEFICIARY.

6 E. A TRANSACTION NOT CONCERNING TRUST PROPERTY IN WHICH THE TRUSTEE
7 ENGAGES IN THE TRUSTEE'S INDIVIDUAL CAPACITY INVOLVES A CONFLICT BETWEEN
8 PERSONAL AND FIDUCIARY INTERESTS IF THE TRANSACTION CONCERNS AN OPPORTUNITY
9 PROPERLY BELONGING TO THE TRUST.

10 F. AN INVESTMENT BY A TRUSTEE IN SECURITIES OF AN INVESTMENT COMPANY
11 OR INVESTMENT TRUST TO WHICH THE TRUSTEE, OR ITS AFFILIATE, PROVIDES SERVICES
12 IN A CAPACITY OTHER THAN AS TRUSTEE IS NOT PRESUMED TO BE AFFECTED BY A
13 CONFLICT BETWEEN PERSONAL AND FIDUCIARY INTERESTS IF THE INVESTMENT OTHERWISE
14 COMPLIES WITH THE PRUDENT INVESTOR RULE OF ARTICLE 9 OF THIS CHAPTER. THE
15 TRUSTEE MAY BE COMPENSATED BY THE INVESTMENT COMPANY OR INVESTMENT TRUST FOR
16 PROVIDING THOSE SERVICES OUT OF FEES CHARGED TO THE TRUST IF THE TRUSTEE AT
17 LEAST ANNUALLY NOTIFIES THE PERSONS ENTITLED UNDER SECTION 14-10813 TO
18 RECEIVE A COPY OF THE TRUSTEE'S ANNUAL REPORT THAT THE BANK OR TRUST COMPANY
19 PROVIDES SERVICES FOR AND RECEIVES FEES FROM THE INVESTMENT COMPANY OR
20 INVESTMENT TRUST. THIS NOTIFICATION MAY BE MADE IN THE TRUSTEE'S STATEMENTS
21 OF THE FIDUCIARY ACCOUNT.

22 G. IN VOTING SHARES OF STOCK OR IN EXERCISING POWERS OF CONTROL OVER
23 SIMILAR INTERESTS IN OTHER FORMS OF ENTERPRISE, THE TRUSTEE SHALL ACT IN THE
24 BEST INTERESTS OF THE BENEFICIARIES. IF THE TRUST IS THE SOLE OWNER OF A
25 CORPORATION OR OTHER FORM OF ENTERPRISE, THE TRUSTEE SHALL ELECT OR APPOINT
26 DIRECTORS OR OTHER MANAGERS WHO WILL MANAGE THE CORPORATION OR ENTERPRISE IN
27 THE BEST INTERESTS OF THE BENEFICIARIES.

28 H. THIS SECTION DOES NOT PRECLUDE THE FOLLOWING TRANSACTIONS, IF FAIR
29 TO THE BENEFICIARIES:

30 1. AN AGREEMENT BETWEEN A TRUSTEE AND A BENEFICIARY RELATING TO THE
31 APPOINTMENT OR COMPENSATION OF THE TRUSTEE.

32 2. PAYMENT OF REASONABLE COMPENSATION TO THE TRUSTEE.

33 3. A TRANSACTION BETWEEN A TRUST AND ANOTHER TRUST, DECEDENT'S ESTATE
34 OR CONSERVATORSHIP OF WHICH THE TRUSTEE IS A FIDUCIARY OR IN WHICH A
35 BENEFICIARY HAS AN INTEREST.

36 4. A DEPOSIT OF TRUST MONEY IN A REGULATED FINANCIAL SERVICE
37 INSTITUTION OPERATED BY THE TRUSTEE.

38 5. AN ADVANCE BY THE TRUSTEE OF MONEY FOR THE PROTECTION OF THE TRUST.

39 I. THE COURT MAY APPOINT A SPECIAL FIDUCIARY TO MAKE A DECISION WITH
40 RESPECT TO ANY PROPOSED TRANSACTION THAT MAY VIOLATE THIS SECTION IF ENTERED
41 INTO BY THE TRUSTEE.

42 14-10803. Impartiality

43 IF A TRUST HAS TWO OR MORE BENEFICIARIES, THE TRUSTEE SHALL ACT
44 IMPARTIALLY IN INVESTING, MANAGING AND DISTRIBUTING THE TRUST PROPERTY,
45 GIVING DUE REGARD TO THE BENEFICIARIES' RESPECTIVE INTERESTS.

1 14-10804. Prudent administration

2 A TRUSTEE SHALL ADMINISTER THE TRUST AS A PRUDENT PERSON WOULD, BY
3 CONSIDERING THE PURPOSES, TERMS, DISTRIBUTIONAL REQUIREMENTS AND OTHER
4 CIRCUMSTANCES OF THE TRUST. IN SATISFYING THIS STANDARD, THE TRUSTEE SHALL
5 EXERCISE REASONABLE CARE, SKILL AND CAUTION.

6 14-10805. Costs of administration

7 IN ADMINISTERING A TRUST, THE TRUSTEE MAY INCUR ONLY COSTS THAT ARE
8 REASONABLE IN RELATION TO THE TRUST PROPERTY, THE PURPOSES OF THE TRUST AND
9 THE SKILLS OF THE TRUSTEE.

10 14-10806. Trustee's skills

11 A TRUSTEE WHO HAS SPECIAL SKILLS OR EXPERTISE, OR WHO IS NAMED TRUSTEE
12 IN RELIANCE ON THE TRUSTEE'S REPRESENTATION THAT THE TRUSTEE HAS SPECIAL
13 SKILLS OR EXPERTISE, SHALL USE THOSE SPECIAL SKILLS OR EXPERTISE.

14 14-10807. Delegation by trustee

15 A. A TRUSTEE MAY DELEGATE DUTIES AND POWERS THAT A PRUDENT TRUSTEE OF
16 COMPARABLE SKILLS COULD PROPERLY DELEGATE UNDER THE CIRCUMSTANCES. THE
17 TRUSTEE SHALL EXERCISE REASONABLE CARE, SKILL AND CAUTION IN:

18 1. SELECTING AN AGENT.

19 2. ESTABLISHING THE SCOPE AND TERMS OF THE DELEGATION, CONSISTENT WITH
20 THE PURPOSES AND TERMS OF THE TRUST.

21 3. PERIODICALLY REVIEWING THE AGENT'S ACTIONS IN ORDER TO MONITOR THE
22 AGENT'S PERFORMANCE AND COMPLIANCE WITH THE TERMS OF THE DELEGATION.

23 B. IN PERFORMING A DELEGATED FUNCTION, AN AGENT OWES A DUTY TO THE
24 TRUST TO EXERCISE REASONABLE CARE TO COMPLY WITH THE TERMS OF THE DELEGATION.

25 C. A TRUSTEE WHO COMPLIES WITH SUBSECTION A IS NOT LIABLE TO THE
26 BENEFICIARIES OR TO THE TRUST FOR AN ACTION OF THE AGENT TO WHOM THE FUNCTION
27 WAS DELEGATED.

28 D. BY ACCEPTING A DELEGATION OF POWERS OR DUTIES FROM THE TRUSTEE OF A
29 TRUST THAT IS SUBJECT TO THE LAW OF THIS STATE, AN AGENT SUBMITS TO THE
30 JURISDICTION OF THE COURTS OF THIS STATE.

31 14-10808. Powers to direct

32 A. WHILE A TRUST IS REVOCABLE, THE TRUSTEE MAY FOLLOW A DIRECTION OF
33 THE SETTLOR THAT IS CONTRARY TO THE TERMS OF THE TRUST.

34 B. IF THE TRUST PROVIDES THAT THE ASSETS IN THE TRUST ARE SUBJECT TO
35 THE DIRECTION OF THE SETTLOR OR A COTRUSTEE, BENEFICIARY OR THIRD PARTY, THE
36 TRUSTEE HAS NO DUTY TO REVIEW THE DIRECTIONS IT IS DIRECTED TO MAKE OR TO
37 NOTIFY THE BENEFICIARIES REGARDING ANY INVESTMENT ACTION TAKEN PURSUANT TO
38 THE DIRECTION. THE TRUSTEE IS NOT RESPONSIBLE FOR THE PURCHASE, MONITORING,
39 RETENTION OR SALE OF ASSETS THAT ARE SUBJECT TO THE DIRECTION OF THE SETTLOR
40 OR A COTRUSTEE, BENEFICIARY OR THIRD PARTY. THE TRUSTEE IS NOT SUBJECT TO
41 LIABILITY IF THE TRUSTEE ACTS PURSUANT TO THE DIRECTION, EVEN IF THE ACTIONS
42 CONSTITUTE A BREACH OF FIDUCIARY DUTY, UNLESS THE TRUSTEE ACTS IN BAD FAITH
43 OR WITH RECKLESS INDIFFERENCE.

44 C. THE TERMS OF A TRUST MAY CONFER ON A TRUSTEE OR OTHER PERSON A
45 POWER TO DIRECT THE MODIFICATION OR TERMINATION OF THE TRUST.

1 D. UNLESS THE TRUST INSTRUMENT PROVIDES OTHERWISE, A PERSON, OTHER
2 THAN A BENEFICIARY, WHO HOLDS A POWER TO DIRECT IS PRESUMPTIVELY A FIDUCIARY
3 WHO, AS SUCH, IS REQUIRED TO ACT IN GOOD FAITH WITH REGARD TO THE PURPOSES OF
4 THE TRUST AND THE INTERESTS OF THE BENEFICIARIES. THE HOLDER OF A POWER TO
5 DIRECT IS LIABLE FOR ANY LOSS THAT RESULTS FROM BREACH OF A FIDUCIARY DUTY.

6 14-10809. Control and protection of trust property

7 A TRUSTEE SHALL TAKE REASONABLE STEPS TO TAKE CONTROL OF AND PROTECT
8 THE TRUST PROPERTY.

9 14-10810. Record keeping and identification of trust property

10 A. A TRUSTEE SHALL KEEP ADEQUATE RECORDS OF THE ADMINISTRATION OF THE
11 TRUST.

12 B. A TRUSTEE SHALL KEEP TRUST PROPERTY SEPARATE FROM THE TRUSTEE'S OWN
13 PROPERTY.

14 C. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION D, A TRUSTEE SHALL CAUSE
15 THE TRUST PROPERTY TO BE DESIGNATED SO THAT THE INTEREST OF THE TRUST, TO THE
16 EXTENT FEASIBLE, APPEARS IN RECORDS MAINTAINED BY A PARTY OTHER THAN A
17 TRUSTEE OR BENEFICIARY.

18 D. IF THE TRUSTEE MAINTAINS RECORDS CLEARLY INDICATING THE RESPECTIVE
19 INTERESTS, A TRUSTEE MAY INVEST AS A WHOLE THE PROPERTY OF TWO OR MORE
20 SEPARATE TRUSTS.

21 14-10811. Enforcement and defense of claims

22 A TRUSTEE SHALL TAKE REASONABLE STEPS TO ENFORCE CLAIMS OF THE TRUST
23 AND TO DEFEND CLAIMS AGAINST THE TRUST.

24 14-10812. Collecting trust property

25 A TRUSTEE SHALL TAKE REASONABLE STEPS TO COMPEL A FORMER TRUSTEE OR
26 OTHER PERSON TO DELIVER TRUST PROPERTY TO THE TRUSTEE AND TO REDRESS A BREACH
27 OF TRUST KNOWN TO THE TRUSTEE TO HAVE BEEN COMMITTED BY A FORMER TRUSTEE.

28 14-10813. Duty to inform and report

29 A. UNLESS THE TRUST INSTRUMENT PROVIDES OTHERWISE, A TRUSTEE SHALL
30 KEEP THE QUALIFIED BENEFICIARIES OF THE TRUST REASONABLY INFORMED ABOUT THE
31 ADMINISTRATION OF THE TRUST AND OF THE MATERIAL FACTS NECESSARY FOR THEM TO
32 PROTECT THEIR INTERESTS. UNLESS THE TRUSTEE DETERMINES THAT IT IS
33 UNREASONABLE UNDER THE CIRCUMSTANCES TO DO SO, A TRUSTEE SHALL PROMPTLY
34 RESPOND TO A BENEFICIARY'S REQUEST FOR INFORMATION RELATED TO THE
35 ADMINISTRATION OF THE TRUST.

36 B. A TRUSTEE:

37 1. ON REQUEST OF A BENEFICIARY, SHALL PROMPTLY FURNISH TO THE
38 BENEFICIARY A COPY OF THE PORTIONS OF THE TRUST INSTRUMENT THAT ARE NECESSARY
39 TO DESCRIBE THE BENEFICIARY'S INTEREST.

40 2. WITHIN SIXTY DAYS AFTER ACCEPTING A TRUSTEESHIP, SHALL NOTIFY THE
41 QUALIFIED BENEFICIARIES OF THE ACCEPTANCE AND OF THE TRUSTEE'S NAME, ADDRESS
42 AND TELEPHONE NUMBER.

43 3. WITHIN SIXTY DAYS AFTER THE DATE THE TRUSTEE ACQUIRES KNOWLEDGE OF
44 THE CREATION OF AN IRREVOCABLE TRUST OR THE DATE THE TRUSTEE ACQUIRES
45 KNOWLEDGE THAT A FORMERLY REVOCABLE TRUST HAS BECOME IRREVOCABLE, WHETHER BY

1 THE DEATH OF THE SETTLOR OR OTHERWISE, SHALL NOTIFY THE QUALIFIED
2 BENEFICIARIES OF THE TRUST'S EXISTENCE, OF THE IDENTITY OF THE SETTLOR OR
3 SETTLORS, OF THE TRUSTEE'S NAME, ADDRESS AND TELEPHONE NUMBER, OF THE RIGHT
4 TO REQUEST A COPY OF THE RELEVANT PORTIONS OF THE TRUST INSTRUMENT AND OF THE
5 RIGHT TO A TRUSTEE'S REPORT AS PROVIDED IN SUBSECTION C.

6 4. SHALL NOTIFY THE QUALIFIED BENEFICIARIES AT LEAST THIRTY DAYS IN
7 ADVANCE OF ANY CHANGE IN THE METHOD OR RATE OF THE TRUSTEE'S COMPENSATION.

8 C. A TRUSTEE SHALL SEND TO THE DISTRIBUTEES OR PERMISSIBLE
9 DISTRIBUTEES OF TRUST INCOME OR PRINCIPAL AND TO OTHER BENEFICIARIES WHO
10 REQUEST IT, AT LEAST ANNUALLY AND AT THE TERMINATION OF THE TRUST, A REPORT
11 OF THE TRUST PROPERTY, LIABILITIES, RECEIPTS AND DISBURSEMENTS, INCLUDING THE
12 SOURCE AND AMOUNT OF THE TRUSTEE'S COMPENSATION, A LISTING OF THE TRUST
13 ASSETS AND, IF FEASIBLE, THEIR RESPECTIVE MARKET VALUES. ON A VACANCY IN A
14 TRUSTEESHIP, UNLESS A COTRUSTEE REMAINS IN OFFICE, A REPORT MUST BE SENT TO
15 THE QUALIFIED BENEFICIARIES BY THE FORMER TRUSTEE. A PERSONAL
16 REPRESENTATIVE, CONSERVATOR OR GUARDIAN MAY SEND THE QUALIFIED BENEFICIARIES
17 A REPORT ON BEHALF OF A DECEASED OR INCAPACITATED TRUSTEE.

18 D. A BENEFICIARY MAY WAIVE THE RIGHT TO A TRUSTEE'S REPORT OR OTHER
19 INFORMATION OTHERWISE REQUIRED TO BE FURNISHED UNDER THIS SECTION. A
20 BENEFICIARY, WITH RESPECT TO FUTURE REPORTS AND OTHER INFORMATION, MAY
21 WITHDRAW A WAIVER PREVIOUSLY GIVEN.

22 E. SUBSECTION B, PARAGRAPHS 2 AND 3 APPLY ONLY TO A TRUSTEE WHO
23 ACCEPTS A TRUSTEESHIP ON OR AFTER JANUARY 1, 2009, TO AN IRREVOCABLE TRUST
24 CREATED ON OR AFTER JANUARY 1, 2009 AND TO A REVOCABLE TRUST THAT BECOMES
25 IRREVOCABLE ON OR AFTER JANUARY 1, 2009.

26 14-10814. Discretionary powers; tax savings

27 A. NOTWITHSTANDING THE BREADTH OF DISCRETION GRANTED TO A TRUSTEE IN
28 THE TERMS OF THE TRUST, INCLUDING THE USE OF TERMS SUCH AS ABSOLUTE, SOLE OR
29 UNCONTROLLED, THE TRUSTEE SHALL EXERCISE A DISCRETIONARY POWER IN GOOD FAITH
30 AS TO ONLY BENEFICIARIES OF THE TRUST AND CREDITORS OF THE TRUST AND NO OTHER
31 PERSONS, INCLUDING CREDITORS OF THE BENEFICIARIES, EXCEPT ONLY TO THE EXTENT
32 THAT CREDITORS OF BENEFICIARIES ARE EXPRESSLY ENTITLED TO ATTACHMENT PURSUANT
33 TO SECTION 14-10504, SUBSECTION B AND IN ACCORDANCE WITH THE TERMS AND
34 PURPOSES OF THE TRUST AND THE INTERESTS OF THE BENEFICIARIES.

35 B. SUBJECT TO SUBSECTION D OF THIS SECTION, AND UNLESS THE TERMS OF
36 THE TRUST EXPRESSLY INDICATE THAT A RULE IN THIS SUBSECTION DOES NOT APPLY;

37 1. A PERSON OTHER THAN A SETTLOR WHO IS A BENEFICIARY AND TRUSTEE OF A
38 TRUST THAT CONFERS ON THE TRUSTEE A POWER TO MAKE DISCRETIONARY DISTRIBUTIONS
39 TO OR FOR THE TRUSTEE'S PERSONAL BENEFIT MAY EXERCISE THE POWER ONLY IN
40 ACCORDANCE WITH AN ASCERTAINABLE STANDARD RELATING TO THE TRUSTEE'S
41 INDIVIDUAL HEALTH, EDUCATION, SUPPORT OR MAINTENANCE WITHIN THE MEANING OF
42 SECTION 2041(b)(1)(A) OR 2514(c)(1) OF THE INTERNAL REVENUE CODE. THIS
43 PARAGRAPH DOES NOT EXPAND THE POWER OR DUTY OF A TRUSTEE TO MAKE
44 DISTRIBUTIONS AND DOES NOT APPLY TO A POWER HELD IN AN INDIVIDUAL CAPACITY.

1 2. A TRUSTEE MAY NOT EXERCISE A POWER TO MAKE DISCRETIONARY
2 DISTRIBUTIONS TO SATISFY A LEGAL OBLIGATION OF SUPPORT THAT THE TRUSTEE
3 PERSONALLY OWES ANOTHER PERSON.

4 C. A POWER WHOSE EXERCISE IS LIMITED OR PROHIBITED BY SUBSECTION B OF
5 THIS SECTION MAY BE EXERCISED BY A MAJORITY OF THE REMAINING TRUSTEES WHOSE
6 EXERCISE OF THE POWER IS NOT SO LIMITED OR PROHIBITED. IF THE POWER OF ALL
7 TRUSTEES IS SO LIMITED OR PROHIBITED, THE COURT MAY APPOINT A SPECIAL
8 FIDUCIARY WITH AUTHORITY TO EXERCISE THE POWER.

9 D. SUBSECTION B OF THIS SECTION DOES NOT APPLY TO:

10 1. A POWER HELD BY THE SETTLOR'S SPOUSE WHO IS THE TRUSTEE OF A TRUST
11 FOR WHICH A MARITAL DEDUCTION, AS DEFINED IN SECTION 2056(b)(5) OR 2523(e) OF
12 THE INTERNAL REVENUE CODE, WAS PREVIOUSLY ALLOWED.

13 2. ANY TRUST DURING ANY PERIOD THAT THE TRUST MAY BE REVOKED OR
14 AMENDED BY ITS SETTLOR.

15 3. A TRUST IF CONTRIBUTIONS TO THE TRUST QUALIFY FOR THE ANNUAL
16 EXCLUSION UNDER SECTION 2503(c) OF THE INTERNAL REVENUE CODE.

17 14-10815. General powers of trustee

18 A. A TRUSTEE, WITHOUT AUTHORIZATION BY THE COURT, MAY EXERCISE:

19 1. POWERS CONFERRED BY THE TERMS OF THE TRUST.

20 2. EXCEPT AS LIMITED BY THE TERMS OF THE TRUST:

21 (a) ALL POWERS OVER THE TRUST PROPERTY THAT AN UNMARRIED COMPETENT
22 OWNER HAS OVER INDIVIDUALLY OWNED PROPERTY.

23 (b) ANY OTHER POWERS APPROPRIATE TO ACHIEVE THE PROPER INVESTMENT,
24 MANAGEMENT AND DISTRIBUTION OF THE TRUST PROPERTY.

25 (c) ANY OTHER POWERS CONFERRED BY THIS CHAPTER.

26 B. THE EXERCISE OF A POWER BY A PERSON ACTING IN A FIDUCIARY CAPACITY
27 IS SUBJECT TO THE FIDUCIARY DUTIES PRESCRIBED BY THIS ARTICLE.

28 14-10816. Specific powers of trustee

29 WITHOUT LIMITING THE AUTHORITY CONFERRED BY SECTION 14-10815, A TRUSTEE
30 MAY:

31 1. COLLECT TRUST PROPERTY AND ACCEPT OR REJECT ADDITIONS TO THE TRUST
32 PROPERTY FROM A SETTLOR OR ANY OTHER PERSON.

33 2. ACQUIRE OR SELL PROPERTY, FOR CASH OR ON CREDIT, AT PUBLIC OR
34 PRIVATE SALE.

35 3. EXCHANGE, PARTITION OR OTHERWISE CHANGE THE CHARACTER OF TRUST
36 PROPERTY.

37 4. DEPOSIT TRUST MONEY IN AN ACCOUNT IN A REGULATED FINANCIAL SERVICE
38 INSTITUTION.

39 5. BORROW MONEY, WITH OR WITHOUT SECURITY, AND MORTGAGE OR PLEDGE
40 TRUST PROPERTY FOR A PERIOD WITHIN OR EXTENDING BEYOND THE DURATION OF THE
41 TRUST.

42 6. WITH RESPECT TO AN INTEREST IN A PROPRIETORSHIP, PARTNERSHIP,
43 LIMITED LIABILITY COMPANY, BUSINESS TRUST, CORPORATION OR OTHER FORM OF
44 BUSINESS OR ENTERPRISE, CONTINUE THE BUSINESS OR OTHER ENTERPRISE AND TAKE
45 ANY ACTION THAT MAY BE TAKEN BY SHAREHOLDERS, MEMBERS OR PROPERTY OWNERS,

1 INCLUDING MERGING, DISSOLVING OR OTHERWISE CHANGING THE FORM OF BUSINESS
2 ORGANIZATION OR CONTRIBUTING ADDITIONAL CAPITAL.

3 7. WITH RESPECT TO STOCKS OR OTHER SECURITIES, EXERCISE THE RIGHTS OF
4 AN ABSOLUTE OWNER, INCLUDING THE RIGHT TO:

5 (a) VOTE, GIVE PROXIES TO VOTE, WITH OR WITHOUT POWER OF SUBSTITUTION,
6 OR ENTER INTO OR CONTINUE A VOTING TRUST AGREEMENT.

7 (b) HOLD A SECURITY IN THE NAME OF A NOMINEE OR IN OTHER FORM WITHOUT
8 DISCLOSURE OF THE TRUST SO THAT TITLE MAY PASS BY DELIVERY.

9 (c) PAY CALLS, ASSESSMENTS AND OTHER SUMS CHARGEABLE OR ACCRUING
10 AGAINST THE SECURITIES AND SELL OR EXERCISE STOCK SUBSCRIPTION OR CONVERSION
11 RIGHTS.

12 (d) DEPOSIT THE SECURITIES WITH A DEPOSITARY OR OTHER REGULATED
13 FINANCIAL SERVICE INSTITUTION.

14 8. WITH RESPECT TO AN INTEREST IN REAL PROPERTY, CONSTRUCT OR MAKE
15 ORDINARY OR EXTRAORDINARY REPAIRS TO, ALTERATIONS TO OR IMPROVEMENTS IN
16 BUILDINGS OR OTHER STRUCTURES, DEMOLISH IMPROVEMENTS, RAZE EXISTING OR ERECT
17 NEW PARTY WALLS OR BUILDINGS, SUBDIVIDE OR DEVELOP LAND, DEDICATE LAND TO
18 PUBLIC USE OR GRANT PUBLIC OR PRIVATE EASEMENTS AND MAKE OR VACATE PLATS AND
19 ADJUST BOUNDARIES.

20 9. ENTER INTO A LEASE FOR ANY PURPOSE AS LESSOR OR LESSEE, INCLUDING A
21 LEASE OR OTHER ARRANGEMENT FOR EXPLORATION AND REMOVAL OF NATURAL RESOURCES,
22 WITH OR WITHOUT THE OPTION TO PURCHASE OR RENEW, FOR A PERIOD WITHIN OR
23 EXTENDING BEYOND THE DURATION OF THE TRUST.

24 10. GRANT AN OPTION INVOLVING A SALE, LEASE OR OTHER DISPOSITION OF
25 TRUST PROPERTY OR ACQUIRE AN OPTION FOR THE ACQUISITION OF PROPERTY,
26 INCLUDING AN OPTION EXERCISABLE BEYOND THE DURATION OF THE TRUST, AND
27 EXERCISE AN OPTION SO ACQUIRED.

28 11. INSURE THE PROPERTY OF THE TRUST AGAINST DAMAGE OR LOSS AND INSURE
29 THE TRUSTEE, THE TRUSTEE'S AGENTS AND BENEFICIARIES AGAINST LIABILITY ARISING
30 FROM THE ADMINISTRATION OF THE TRUST.

31 12. ABANDON OR DECLINE TO ADMINISTER PROPERTY OF NO VALUE OR OF
32 INSUFFICIENT VALUE TO JUSTIFY ITS COLLECTION OR CONTINUED ADMINISTRATION.

33 13. WITH RESPECT TO POSSIBLE LIABILITY FOR VIOLATION OF ENVIRONMENTAL
34 LAW:

35 (a) INSPECT OR INVESTIGATE PROPERTY THE TRUSTEE HOLDS OR HAS BEEN
36 ASKED TO HOLD, OR PROPERTY OWNED OR OPERATED BY AN ORGANIZATION IN WHICH THE
37 TRUSTEE HOLDS OR HAS BEEN ASKED TO HOLD AN INTEREST, FOR THE PURPOSE OF
38 DETERMINING THE APPLICATION OF ENVIRONMENTAL LAW WITH RESPECT TO THE
39 PROPERTY.

40 (b) TAKE ACTION TO PREVENT, ABATE OR OTHERWISE REMEDY ANY ACTUAL OR
41 POTENTIAL VIOLATION OF ANY ENVIRONMENTAL LAW AFFECTING PROPERTY HELD DIRECTLY
42 OR INDIRECTLY BY THE TRUSTEE, WHETHER TAKEN BEFORE OR AFTER THE ASSERTION OF
43 A CLAIM OR THE INITIATION OF GOVERNMENTAL ENFORCEMENT.

1 (c) DECLINE TO ACCEPT PROPERTY INTO TRUST OR DISCLAIM ANY POWER WITH
2 RESPECT TO PROPERTY THAT IS OR MAY BE BURDENED WITH LIABILITY FOR VIOLATION
3 OF ENVIRONMENTAL LAW.

4 (d) COMPROMISE CLAIMS AGAINST THE TRUST THAT MAY BE ASSERTED FOR AN
5 ALLEGED VIOLATION OF ENVIRONMENTAL LAW.

6 (e) PAY THE EXPENSE OF ANY INSPECTION, REVIEW, ABATEMENT OR REMEDIAL
7 ACTION TO COMPLY WITH ENVIRONMENTAL LAW.

8 14. PAY OR CONTEST ANY CLAIM, SETTLE A CLAIM BY OR AGAINST THE TRUST
9 AND RELEASE IN WHOLE OR IN PART A CLAIM BELONGING TO THE TRUST.

10 15. PAY TAXES, ASSESSMENTS, COMPENSATION OF THE TRUSTEE AND OF
11 EMPLOYEES AND AGENTS OF THE TRUST AND OTHER EXPENSES INCURRED IN THE
12 ADMINISTRATION OF THE TRUST.

13 16. EXERCISE ELECTIONS WITH RESPECT TO FEDERAL, STATE AND LOCAL TAXES.

14 17. SELECT A MODE OF PAYMENT UNDER ANY EMPLOYEE BENEFIT OR RETIREMENT
15 PLAN, ANNUITY OR LIFE INSURANCE PAYABLE TO THE TRUSTEE, EXERCISE RIGHTS
16 THEREUNDER, INCLUDING EXERCISE OF THE RIGHT TO INDEMNIFICATION FOR EXPENSES
17 AND AGAINST LIABILITIES, AND TAKE APPROPRIATE ACTION TO COLLECT THE PROCEEDS.

18 18. MAKE LOANS OUT OF TRUST PROPERTY, INCLUDING LOANS TO A BENEFICIARY
19 ON TERMS AND CONDITIONS THE TRUSTEE CONSIDERS TO BE FAIR AND REASONABLE UNDER
20 THE CIRCUMSTANCES, AND THE TRUSTEE HAS A LIEN ON FUTURE DISTRIBUTIONS FOR
21 REPAYMENT OF THOSE LOANS.

22 19. PLEDGE TRUST PROPERTY TO GUARANTEE LOANS MADE BY OTHERS TO THE
23 BENEFICIARY.

24 20. APPOINT A TRUSTEE TO ACT IN ANOTHER JURISDICTION WITH RESPECT TO
25 TRUST PROPERTY LOCATED IN THE OTHER JURISDICTION, CONFER ON THE APPOINTED
26 TRUSTEE ALL OF THE POWERS AND DUTIES OF THE APPOINTING TRUSTEE, REQUIRE THAT
27 THE APPOINTED TRUSTEE FURNISH SECURITY AND REMOVE ANY TRUSTEE SO APPOINTED.

28 21. PAY AN AMOUNT DISTRIBUTABLE TO A BENEFICIARY WHO IS UNDER A LEGAL
29 DISABILITY OR WHO THE TRUSTEE REASONABLY BELIEVES IS INCAPACITATED, BY PAYING
30 IT DIRECTLY TO THE BENEFICIARY OR APPLYING IT FOR THE BENEFICIARY'S BENEFIT,
31 OR BY EITHER:

32 (a) PAYING IT TO THE BENEFICIARY'S CONSERVATOR OR, IF THE BENEFICIARY
33 DOES NOT HAVE A CONSERVATOR, THE BENEFICIARY'S GUARDIAN.

34 (b) PAYING IT TO THE BENEFICIARY'S CUSTODIAN UNDER THE UNIFORM
35 TRANSFERS TO MINORS ACT OR CUSTODIAL TRUSTEE UNDER THE UNIFORM CUSTODIAL
36 TRUST ACT, AND, FOR THAT PURPOSE, CREATING A CUSTODIANSHIP OR CUSTODIAL
37 TRUST.

38 (c) IF THE TRUSTEE DOES NOT KNOW OF A CONSERVATOR, GUARDIAN, CUSTODIAN
39 OR CUSTODIAL TRUSTEE, PAYING IT TO AN ADULT RELATIVE OR OTHER PERSON HAVING
40 LEGAL OR PHYSICAL CARE OR CUSTODY OF THE BENEFICIARY TO BE EXPENDED ON THE
41 BENEFICIARY'S BEHALF.

42 (d) MANAGING IT AS A SEPARATE FUND ON THE BENEFICIARY'S BEHALF,
43 SUBJECT TO THE BENEFICIARY'S CONTINUING RIGHT TO WITHDRAW THE DISTRIBUTION.

22. ON DISTRIBUTION OF TRUST PROPERTY OR THE DIVISION OR TERMINATION OF A TRUST, MAKE DISTRIBUTIONS IN DIVIDED OR UNDIVIDED INTERESTS, ALLOCATE PARTICULAR ASSETS, INCLUDING COMMUNITY PROPERTY, IN PROPORTIONATE OR DISPROPORTIONATE SHARES, VALUE THE TRUST PROPERTY FOR THOSE PURPOSES AND ADJUST FOR RESULTING DIFFERENCES IN VALUATION. IN MAKING A DIVISION OR DISTRIBUTION OF COMMUNITY PROPERTY HELD IN TRUST, THE TRUSTEE MAY CONSIDER COMMUNITY PROPERTY HELD OUTSIDE THE TRUST SO THAT THE DIVISION OF COMMUNITY PROPERTY HELD IN THE TRUST AND OUTSIDE OF THE TRUST IS MADE BASED ON EQUAL VALUE BUT NOT NECESSARILY PROPORTIONATELY.

23. RESOLVE A DISPUTE CONCERNING THE INTERPRETATION OF THE TRUST OR ITS ADMINISTRATION BY MEDIATION, ARBITRATION OR OTHER PROCEDURE FOR ALTERNATIVE DISPUTE RESOLUTION.

24. PROSECUTE OR DEFEND AN ACTION, CLAIM OR JUDICIAL PROCEEDING IN ANY JURISDICTION TO PROTECT TRUST PROPERTY AND THE TRUSTEE IN THE PERFORMANCE OF THE TRUSTEE'S DUTIES.

25. SIGN AND DELIVER CONTRACTS AND OTHER INSTRUMENTS THAT ARE USEFUL TO ACHIEVE OR FACILITATE THE EXERCISE OF THE TRUSTEE'S POWERS.

26. ON TERMINATION OF THE TRUST, EXERCISE THE POWERS APPROPRIATE TO WIND UP THE ADMINISTRATION OF THE TRUST AND DISTRIBUTE THE TRUST PROPERTY TO THE PERSONS ENTITLED TO IT.

14-10817. Distribution on termination

A. ON TERMINATION OR PARTIAL TERMINATION OF A TRUST, THE TRUSTEE MAY SEND TO THE BENEFICIARIES A PROPOSAL FOR DISTRIBUTION. THE RIGHT OF ANY BENEFICIARY TO OBJECT TO THE PROPOSED DISTRIBUTION TERMINATES IF THE BENEFICIARY DOES NOT NOTIFY THE TRUSTEE OF AN OBJECTION WITHIN THIRTY DAYS AFTER THE PROPOSAL WAS SENT BUT ONLY IF THE PROPOSAL INFORMED THE BENEFICIARY OF THE RIGHT TO OBJECT AND OF THE TIME ALLOWED FOR OBJECTION.

B. ON THE OCCURRENCE OF AN EVENT TERMINATING OR PARTIALLY TERMINATING A TRUST, THE TRUSTEE, WITHIN A REASONABLE TIME, SHALL DISTRIBUTE THE TRUST PROPERTY TO THE PERSONS ENTITLED TO IT SUBJECT TO THE RIGHT OF THE TRUSTEE TO RETAIN A REASONABLE RESERVE FOR THE PAYMENT OF DEBTS, EXPENSES AND TAXES.

C. A RELEASE BY A BENEFICIARY OF A TRUSTEE FROM LIABILITY FOR BREACH OF TRUST IS INVALID TO THE EXTENT:

1. IT WAS INDUCED BY IMPROPER CONDUCT OF THE TRUSTEE.

2. THE BENEFICIARY, AT THE TIME OF THE RELEASE, DID NOT KNOW OF THE BENEFICIARY'S RIGHTS OR OF THE MATERIAL FACTS RELATING TO THE BREACH.

14-10818. Trust protector

A. A TRUST INSTRUMENT MAY PROVIDE FOR THE APPOINTMENT OF A TRUST PROTECTOR. FOR THE PURPOSES OF THIS SECTION, A PERSON DESIGNATED WITH A STATUS OR TITLE, OTHER THAN THAT OF A BENEFICIARY, WITH POWERS SIMILAR TO THOSE SPECIFIED IN SUBSECTION B IS A TRUST PROTECTOR, EXCEPT TO THE EXTENT OTHERWISE PROVIDED IN THE TRUST INSTRUMENT.

B. A TRUST PROTECTOR APPOINTED BY THE TRUST INSTRUMENT HAS THE POWERS, DELEGATIONS AND FUNCTIONS CONFERRED ON THE TRUST PROTECTOR BY THE TRUST INSTRUMENT, INCLUDING THE FOLLOWING:

- 1 1. REMOVE AND APPOINT A TRUSTEE.
- 2 2. MODIFY OR AMEND THE TRUST INSTRUMENT FOR ANY VALID PURPOSE OR
- 3 REASON, INCLUDING, WITHOUT LIMITATION, TO ACHIEVE FAVORABLE TAX STATUS OR TO
- 4 RESPOND TO CHANGES IN THE INTERNAL REVENUE CODE OR STATE LAW, OR THE RULINGS
- 5 AND REGULATIONS UNDER THAT CODE OR LAW.
- 6 3. INCREASE, DECREASE, MODIFY OR RESTRICT THE INTERESTS OF ANY
- 7 BENEFICIARY OF THE TRUST.
- 8 4. MODIFY THE TERMS OF A POWER OF APPOINTMENT GRANTED BY THE TRUST.
- 9 5. CHANGE THE APPLICABLE LAW GOVERNING THE TRUST.
- 10 C. EXCEPT TO THE EXTENT OTHERWISE SPECIFICALLY PROVIDED IN THE TRUST
- 11 INSTRUMENT, A MODIFICATION AUTHORIZED UNDER SUBSECTION B MAY NOT:
- 12 1. GRANT A BENEFICIAL INTEREST TO AN INDIVIDUAL OR A CLASS OF
- 13 INDIVIDUALS UNLESS THE INDIVIDUAL OR CLASS OF INDIVIDUALS IS SPECIFICALLY
- 14 PROVIDED FOR UNDER THE TRUST INSTRUMENT.
- 15 2. MODIFY THE BENEFICIAL INTEREST OF A GOVERNMENTAL UNIT IN A SPECIAL
- 16 NEEDS TRUST.
- 17 D. ANY PROVISION OF THIS TITLE TO THE CONTRARY, BUT EXCEPT TO THE
- 18 EXTENT OTHERWISE PROVIDED BY THE TRUST INSTRUMENT, A TRUST PROTECTOR IS NOT A
- 19 TRUSTEE OR FIDUCIARY AND IS NOT LIABLE OR ACCOUNTABLE AS A TRUSTEE OR
- 20 FIDUCIARY BECAUSE OF AN ACT OR OMISSION OF THE TRUST PROTECTOR WHEN
- 21 PERFORMING OR FAILING TO PERFORM THE DUTIES OF A TRUST PROTECTOR UNDER THE
- 22 TRUST INSTRUMENT. THIS SUBSECTION DOES NOT APPLY TO TRUSTS THAT BECOME
- 23 IRREVOCABLE BEFORE THE EFFECTIVE DATE OF THIS SECTION.

24 ARTICLE 9. PRUDENT INVESTOR RULE

25 14-10901. Prudent investor rule

26 A. EXCEPT AS PROVIDED IN SUBSECTION B, A TRUSTEE WHO INVESTS AND

27 MANAGES TRUST ASSETS OWES A DUTY TO THE BENEFICIARIES OF THE TRUST TO COMPLY

28 WITH THE PRUDENT INVESTOR RULE REQUIREMENTS OF THIS ARTICLE.

29 B. THE PRUDENT INVESTOR RULE IS A DEFAULT RULE AND MAY BE EXPANDED,

30 RESTRICTED, ELIMINATED OR OTHERWISE ALTERED BY THE PROVISIONS OF A TRUST.

31 C. A TRUSTEE IS NOT LIABLE TO A BENEFICIARY TO THE EXTENT THAT THE

32 TRUSTEE ACTED IN REASONABLE RELIANCE ON THE PROVISIONS OF THE TRUST.

33 14-10902. Standard of care; portfolio strategy; risk and return

34 objectives

35 A. A TRUSTEE SHALL INVEST AND MANAGE TRUST ASSETS AS A PRUDENT

36 INVESTOR WOULD BY CONSIDERING THE PURPOSES, TERMS, DISTRIBUTION REQUIREMENTS

37 AND OTHER CIRCUMSTANCES OF THE TRUST. IN SATISFYING THIS STANDARD THE

38 TRUSTEE SHALL EXERCISE REASONABLE CARE, SKILL AND CAUTION.

39 B. A TRUSTEE'S INVESTMENT AND MANAGEMENT DECISIONS RESPECTING

40 INDIVIDUAL ASSETS SHALL NOT BE EVALUATED IN ISOLATION BUT IN THE CONTEXT OF

41 THE TRUST PORTFOLIO AS A WHOLE AND AS A PART OF AN OVERALL INVESTMENT

42 STRATEGY HAVING RISK AND RETURN OBJECTIVES REASONABLY SUITED TO THE TRUST.

43 C. AMONG CIRCUMSTANCES THAT A TRUSTEE SHALL CONSIDER IN INVESTING AND

44 MANAGING TRUST ASSETS ARE ANY OF THE FOLLOWING THAT ARE RELEVANT TO THE TRUST

45 OR ITS BENEFICIARIES:

- 1 1. GENERAL ECONOMIC CONDITIONS.
- 2 2. THE POSSIBLE EFFECT OF INFLATION OR DEFLATION.
- 3 3. THE EXPECTED TAX CONSEQUENCES OF INVESTMENT DECISIONS OR
- 4 STRATEGIES.
- 5 4. THE ROLE THAT EACH INVESTMENT OR COURSE OF ACTION PLAYS WITHIN THE
- 6 OVERALL TRUST PORTFOLIO, WHICH MAY INCLUDE FINANCIAL ASSETS, INTERESTS IN
- 7 CLOSELY HELD ENTERPRISES, SPECIALTY ASSETS, ALTERNATIVE INVESTMENTS, TANGIBLE
- 8 AND INTANGIBLE PERSONAL PROPERTY AND REAL PROPERTY.
- 9 5. THE EXPECTED TOTAL RETURN FROM INCOME AND THE APPRECIATION OF
- 10 CAPITAL.
- 11 6. OTHER RESOURCES OF THE BENEFICIARIES.
- 12 7. NEEDS FOR LIQUIDITY, REGULARITY OF INCOME AND PRESERVATION OR
- 13 APPRECIATION OF CAPITAL.
- 14 8. AN ASSET'S SPECIAL RELATIONSHIP OR SPECIAL VALUE, IF ANY, TO THE
- 15 PURPOSES OF THE TRUST OR TO ONE OR MORE OF THE BENEFICIARIES.
- 16 D. A TRUSTEE SHALL MAKE A REASONABLE EFFORT TO VERIFY FACTS RELEVANT
- 17 TO THE INVESTMENT AND MANAGEMENT OF TRUST ASSETS.
- 18 E. A TRUSTEE MAY INVEST IN ANY KIND OF PROPERTY OR TYPE OF INVESTMENT
- 19 CONSISTENT WITH THE STANDARDS OF THIS ARTICLE.
- 20 14-10903. Diversification
- 21 A TRUSTEE SHALL DIVERSIFY THE INVESTMENTS OF THE TRUST UNLESS THE
- 22 TRUSTEE REASONABLY DETERMINES THAT, BECAUSE OF SPECIAL CIRCUMSTANCES, THE
- 23 PURPOSES OF THE TRUST ARE BETTER SERVED WITHOUT DIVERSIFYING.
- 24 14-10904. Duties at inception of trusteeship
- 25 WITHIN A REASONABLE TIME AFTER ACCEPTING A TRUSTEESHIP OR RECEIVING
- 26 TRUST ASSETS, A TRUSTEE SHALL REVIEW THE TRUST ASSETS AND MAKE AND IMPLEMENT
- 27 DECISIONS CONCERNING THE RETENTION AND DISPOSITION OF ASSETS IN ORDER TO
- 28 BRING THE TRUST PORTFOLIO INTO COMPLIANCE WITH THE PURPOSES, TERMS,
- 29 DISTRIBUTION REQUIREMENTS AND OTHER CIRCUMSTANCES OF THE TRUST AND WITH THE
- 30 REQUIREMENTS OF THIS ARTICLE.
- 31 14-10905. Reviewing compliance
- 32 COMPLIANCE WITH THIS ARTICLE IS DETERMINED IN LIGHT OF THE FACTS AND
- 33 CIRCUMSTANCES EXISTING AT THE TIME OF A TRUSTEE'S DECISION OR ACTION AND NOT
- 34 BY HINDSIGHT.
- 35 14-10906. Prudent investor rule; language to invoke standard
- 36 THE FOLLOWING TERMS OR COMPARABLE LANGUAGE IN THE PROVISIONS OF A
- 37 TRUST, UNLESS OTHERWISE LIMITED OR MODIFIED, AUTHORIZES ANY INVESTMENT OR
- 38 STRATEGY PERMITTED UNDER THIS ARTICLE:
- 39 1. INVESTMENTS PERMISSIBLE BY LAW FOR INVESTMENT OF TRUST FUNDS.
- 40 2. LEGAL INVESTMENTS.
- 41 3. AUTHORIZED INVESTMENTS.
- 42 4. USING THE JUDGMENT AND CARE UNDER THE CIRCUMSTANCES THEN PREVAILING
- 43 THAT PERSONS OF PRUDENCE, DISCRETION AND INTELLIGENCE EXERCISE IN THE
- 44 MANAGEMENT OF THEIR OWN AFFAIRS, NOT IN REGARD TO SPECULATION BUT IN REGARD

1 TO THE PERMANENT DISPOSITION OF THEIR FUNDS, CONSIDERING THE PROBABLE INCOME
2 AS WELL AS THE PROBABLE SAFETY OF THEIR CAPITAL.

3 5. PRUDENT MAN RULE.

4 6. PRUDENT TRUSTEE RULE.

5 7. PRUDENT PERSON RULE.

6 8. PRUDENT INVESTOR RULE.

7 14-10907. Delegation of investment and management functions:
8 duties; limitations

9 A. A FIDUCIARY MAY DELEGATE INVESTMENT AND MANAGEMENT FUNCTIONS THAT A
10 PRUDENT INVESTOR OF COMPARABLE SKILLS MIGHT DELEGATE UNDER THE CIRCUMSTANCES.

11 B. A FIDUCIARY IS NOT RESPONSIBLE FOR THE INVESTMENT DECISIONS OR
12 ACTIONS OF THE INVESTMENT AGENT TO WHICH THE INVESTMENT FUNCTIONS ARE
13 DELEGATED IF THE FIDUCIARY EXERCISES REASONABLE CARE, SKILL AND CAUTION IN
14 SELECTING THE INVESTMENT AGENT, IN ESTABLISHING THE SCOPE AND SPECIFIC TERMS
15 OF THE DELEGATION AND IN REVIEWING PERIODICALLY THE INVESTMENT AGENT'S
16 ACTIONS IN ORDER TO MONITOR THE INVESTMENT AGENT'S PERFORMANCE AND COMPLIANCE
17 WITH THE SCOPE AND SPECIFIC TERMS OF THE DELEGATION.

18 C. THE INVESTMENT AGENT MUST COMPLY WITH THE SCOPE AND TERMS OF THE
19 DELEGATION AND EXERCISE THE DELEGATED FUNCTION WITH REASONABLE CARE, SKILL
20 AND CAUTION AND IS LIABLE TO THE TRUST IF THE AGENT FAILS TO DO SO. AN
21 INVESTMENT AGENT WHO REPRESENTS THAT THE AGENT HAS SPECIAL INVESTMENT SKILLS
22 MUST EXERCISE THOSE SKILLS.

23 D. AN INVESTMENT AGENT WHO ACCEPTS THE DELEGATION OF A FIDUCIARY'S
24 FUNCTION FROM A FIDUCIARY WHO IS SUBJECT TO THE JURISDICTION OF A COURT OF
25 THIS STATE IS DEEMED TO HAVE SUBMITTED TO THE JURISDICTION OF THAT COURT EVEN
26 IF THE DELEGATION AGREEMENT PROVIDES FOR A DIFFERENT JURISDICTION OR VENUE.

27 E. A COFIDUCIARY MAY DELEGATE INVESTMENT AND MANAGEMENT FUNCTIONS TO
28 ANOTHER COFIDUCIARY IF THE DELEGATING COFIDUCIARY REASONABLY BELIEVES THAT
29 THE OTHER COFIDUCIARY HAS GREATER INVESTMENT SKILLS THAN THE DELEGATING
30 COFIDUCIARY WITH RESPECT TO THOSE FUNCTIONS. THE DELEGATING COFIDUCIARY IS
31 NOT RESPONSIBLE FOR THE INVESTMENT DECISIONS OR ACTIONS OF THE OTHER
32 COFIDUCIARY TO WHICH THE INVESTMENT FUNCTION ARE DELEGATED IF THE DELEGATING
33 COFIDUCIARY EXERCISES REASONABLE CARE, SKILL AND CAUTION IN ESTABLISHING THE
34 SCOPE AND SPECIFIC TERMS OF THE DELEGATION AND IN REVIEWING PERIODICALLY THE
35 OTHER COFIDUCIARY'S ACTIONS IN ORDER TO MONITOR THE COFIDUCIARY'S PERFORMANCE
36 AND COMPLIANCE WITH THE SCOPE AND SPECIFIC TERMS OF THE DELEGATION.

37 F. INVESTMENT IN A MUTUAL FUND IS NOT A DELEGATION OF INVESTMENT
38 FUNCTION AND NEITHER THE MUTUAL FUND NOR ITS ADVISOR IS AN INVESTMENT AGENT.

39 14-10908. Life insurance on settlor; liability of trustee

40 A TRUSTEE MAY ACQUIRE OR RETAIN A CONTRACT OF LIFE INSURANCE ON THE
41 LIFE OF THE SETTLOR OR THE SETTLOR'S SPOUSE, OR BOTH, WITHOUT LIABILITY FOR A
42 LOSS ARISING FROM THE TRUSTEE'S FAILURE TO:

43 1. DETERMINE WHETHER THE CONTRACT IS OR REMAINS A PROPER INVESTMENT.

44 2. INVESTIGATE THE FINANCIAL STRENGTH OF THE LIFE INSURANCE COMPANY.

45 3. EXERCISE NONFORFEITURE PROVISIONS AVAILABLE UNDER THE CONTRACT.

4. DIVERSIFY THE CONTRACT.

14-10909. Application to existing trusts

A. THIS ARTICLE APPLIES TO TRUSTS EXISTING ON AND CREATED AFTER JULY 20, 1996.

B. AS APPLIED TO TRUSTS EXISTING ON JULY 20, 1996, THIS ARTICLE GOVERNS ONLY DECISIONS OR ACTIONS OCCURRING AFTER THAT DATE.

ARTICLE 10. LIABILITY OF TRUSTEES AND
RIGHTS OF PERSONS DEALING WITH TRUSTEES

14-11001. Remedies for breach of trust

A. A VIOLATION BY A TRUSTEE OF A DUTY THE TRUSTEE OWES TO A BENEFICIARY IS A BREACH OF TRUST.

B. EXCEPT AS PROVIDED IN SECTION 14-7404, TO REMEDY A BREACH OF TRUST THAT HAS OCCURRED OR MAY OCCUR, THE COURT MAY:

1. COMPEL THE TRUSTEE TO PERFORM THE TRUSTEE'S DUTIES.

2. ENJOIN THE TRUSTEE FROM COMMITTING A BREACH OF TRUST.

3. COMPEL THE TRUSTEE TO REDRESS A BREACH OF TRUST BY PAYING MONEY, RESTORING PROPERTY OR OTHER MEANS.

4. ORDER A TRUSTEE TO ACCOUNT.

5. APPOINT A SPECIAL FIDUCIARY TO TAKE POSSESSION OF THE TRUST PROPERTY AND ADMINISTER THE TRUST.

6. SUSPEND THE TRUSTEE.

7. REMOVE THE TRUSTEE AS PROVIDED IN SECTION 14-10706.

8. REDUCE OR DENY COMPENSATION TO THE TRUSTEE.

9. SUBJECT TO SECTION 14-10706, VOID AN ACT OF THE TRUSTEE, IMPOSE A LIEN OR A CONSTRUCTIVE TRUST ON TRUST PROPERTY OR TRACE TRUST PROPERTY WRONGFULLY DISPOSED OF AND RECOVER THE PROPERTY OR ITS PROCEEDS.

10. ORDER ANY OTHER APPROPRIATE RELIEF.

14-11002. Damages for breach of trust

A. EXCEPT AS PROVIDED IN SECTION 14-7404, A TRUSTEE WHO COMMITS A BREACH OF TRUST IS LIABLE TO THE BENEFICIARIES AFFECTED FOR THE GREATER OF EITHER:

1. THE AMOUNT REQUIRED TO RESTORE THE VALUE OF THE TRUST PROPERTY AND TRUST DISTRIBUTIONS TO WHAT THEY WOULD HAVE BEEN HAD THE BREACH NOT OCCURRED.

2. THE PROFIT THE TRUSTEE MADE BY REASON OF THE BREACH.

B. EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, IF MORE THAN ONE TRUSTEE IS LIABLE TO THE BENEFICIARIES FOR A BREACH OF TRUST, A TRUSTEE IS ENTITLED TO CONTRIBUTION FROM THE OTHER TRUSTEE OR TRUSTEES. A TRUSTEE IS NOT ENTITLED TO CONTRIBUTION IF THE TRUSTEE WAS SUBSTANTIALLY MORE AT FAULT THAN ANOTHER TRUSTEE OR IF THE TRUSTEE COMMITTED THE BREACH OF TRUST IN BAD FAITH OR WITH RECKLESS INDIFFERENCE TO THE PURPOSES OF THE TRUST OR THE INTERESTS OF THE BENEFICIARIES. A TRUSTEE WHO RECEIVED A BENEFIT FROM THE BREACH OF TRUST IS NOT ENTITLED TO CONTRIBUTION FROM ANOTHER TRUSTEE TO THE EXTENT OF THE BENEFIT RECEIVED.

1 14-11003. Damages in absence of breach

2 A. EXCEPT AS PROVIDED IN SECTION 14-7404, A TRUSTEE IS ACCOUNTABLE TO
3 AN AFFECTED BENEFICIARY FOR ANY PROFIT MADE BY THE TRUSTEE ARISING FROM THE
4 ADMINISTRATION OF THE TRUST, EVEN ABSENT A BREACH OF TRUST.

5 B. ABSENT A BREACH OF TRUST, A TRUSTEE IS NOT LIABLE TO A BENEFICIARY
6 FOR A LOSS OR DEPRECIATION IN THE VALUE OF TRUST PROPERTY OR FOR NOT HAVING
7 MADE A PROFIT.

8 14-11004. Attorney fees and costs

9 A. A TRUSTEE OR A PERSON WHO IS NOMINATED AS A TRUSTEE IS ENTITLED TO
10 REIMBURSEMENT FROM THE TRUST FOR THAT PERSON'S REASONABLE FEES, EXPENSES AND
11 DISBURSEMENT, INCLUDING ATTORNEY FEES AND COSTS, THAT ARISE OUT OF AND THAT
12 RELATE TO THE GOOD FAITH DEFENSE OR PROSECUTION OF A JUDICIAL OR ALTERNATIVE
13 DISPUTE RESOLUTION PROCEEDING INVOLVING THE ADMINISTRATION OF THE TRUST,
14 REGARDLESS OF WHETHER THE DEFENSE OR PROSECUTION IS SUCCESSFUL.

15 B. A COURT OR ARBITRATOR MAY ORDER THAT A PARTY'S REASONABLE FEES,
16 EXPENSES AND DISBURSEMENTS PURSUANT TO SUBSECTION A BE PAID BY ANY OTHER
17 PARTY OR THE TRUST THAT IS THE SUBJECT OF THE JUDICIAL PROCEEDING.

18 14-11005. Limitation of action against trustee

19 A. A BENEFICIARY MAY NOT COMMENCE A PROCEEDING AGAINST A TRUSTEE FOR
20 BREACH OF TRUST MORE THAN ONE YEAR AFTER THE DATE THE BENEFICIARY OR A
21 REPRESENTATIVE OF THE BENEFICIARY WAS SENT A REPORT THAT ADEQUATELY DISCLOSED
22 THE EXISTENCE OF A POTENTIAL CLAIM FOR BREACH OF TRUST AND INFORMED THE
23 BENEFICIARY OF THE TIME ALLOWED FOR COMMENCING A PROCEEDING.

24 B. A REPORT ADEQUATELY DISCLOSES THE EXISTENCE OF A POTENTIAL CLAIM
25 FOR BREACH OF TRUST IF IT PROVIDES SUFFICIENT INFORMATION SO THAT THE
26 BENEFICIARY OR REPRESENTATIVE KNOWS OF THE POTENTIAL CLAIM OR SHOULD HAVE
27 INQUIRED INTO ITS EXISTENCE.

28 C. IF SUBSECTION A DOES NOT APPLY, A JUDICIAL PROCEEDING BY A
29 BENEFICIARY AGAINST A TRUSTEE FOR BREACH OF TRUST MUST BE COMMENCED WITHIN
30 TWO YEARS AFTER THE FIRST TO OCCUR OF:

- 31 1. THE REMOVAL, RESIGNATION OR DEATH OF THE TRUSTEE.
32 2. THE TERMINATION OF THE BENEFICIARY'S INTEREST IN THE TRUST.
33 3. THE TERMINATION OF THE TRUST.

34 14-11006. Reliance on trust instrument

35 A TRUSTEE WHO ACTS IN REASONABLE RELIANCE ON THE TERMS OF THE TRUST AS
36 EXPRESSED IN THE TRUST INSTRUMENT IS NOT LIABLE TO A BENEFICIARY FOR A BREACH
37 OF TRUST TO THE EXTENT THE BREACH RESULTED FROM THE RELIANCE.

38 14-11007. Event affecting administration or distribution

39 IF THE HAPPENING OF AN EVENT, INCLUDING MARRIAGE, DIVORCE, PERFORMANCE
40 OF EDUCATIONAL REQUIREMENTS OR DEATH, AFFECTS THE ADMINISTRATION OR
41 DISTRIBUTION OF A TRUST, A TRUSTEE WHO HAS EXERCISED REASONABLE CARE TO
42 ASCERTAIN THE HAPPENING OF THE EVENT IS NOT LIABLE FOR A LOSS RESULTING FROM
43 THE TRUSTEE'S LACK OF KNOWLEDGE.

14-11008. Exculpation of trustee

A. A TERM OF A TRUST RELIEVING A TRUSTEE OF LIABILITY FOR BREACH OF TRUST IS UNENFORCEABLE TO THE EXTENT THAT IT EITHER:

1. RELIEVES THE TRUSTEE OF LIABILITY FOR BREACH OF TRUST COMMITTED IN BAD FAITH OR WITH RECKLESS INDIFFERENCE TO THE PURPOSES OF THE TRUST OR THE INTERESTS OF THE BENEFICIARIES.

2. WAS INSERTED AS THE RESULT OF AN ABUSE BY THE TRUSTEE OF A FIDUCIARY OR CONFIDENTIAL RELATIONSHIP TO THE SETTLOR.

B. AN EXCULPATORY TERM DRAFTED OR CAUSED TO BE DRAFTED BY THE TRUSTEE IS INVALID AS AN ABUSE OF A FIDUCIARY OR CONFIDENTIAL RELATIONSHIP UNLESS THE TRUSTEE PROVES THAT THE EXCULPATORY TERM IS FAIR UNDER THE CIRCUMSTANCES AND THAT ITS EXISTENCE AND CONTENTS WERE ADEQUATELY COMMUNICATED TO THE SETTLOR.

C. SUBSECTION B DOES NOT APPLY TO AN IRREVOCABLE TRUST CREATED BEFORE JANUARY 1, 2009 OR TO A REVOCABLE TRUST CREATED BEFORE JANUARY 1, 2009 THAT IS NOT AMENDED ON OR AFTER JANUARY 1, 2009.

14-11009. Beneficiary's consent, release or ratification

A TRUSTEE IS NOT LIABLE TO A BENEFICIARY FOR BREACH OF TRUST IF THE BENEFICIARY CONSENTED TO THE CONDUCT CONSTITUTING THE BREACH, RELEASED THE TRUSTEE FROM LIABILITY FOR THE BREACH OR RATIFIED THE TRANSACTION CONSTITUTING THE BREACH, UNLESS EITHER:

1. THE CONSENT, RELEASE OR RATIFICATION OF THE BENEFICIARY WAS INDUCED BY IMPROPER CONDUCT OF THE TRUSTEE.

2. AT THE TIME OF THE CONSENT, RELEASE OR RATIFICATION, THE BENEFICIARY DID NOT KNOW OF THE BENEFICIARY'S RIGHTS OR OF THE MATERIAL FACTS RELATING TO THE BREACH.

14-11010. Limitation on personal liability of trustee

A. EXCEPT AS OTHERWISE PROVIDED IN THE CONTRACT, A TRUSTEE IS NOT PERSONALLY LIABLE ON A CONTRACT PROPERLY ENTERED INTO IN THE TRUSTEE'S FIDUCIARY CAPACITY IN THE COURSE OF ADMINISTERING THE TRUST IF THE TRUSTEE IN THE CONTRACT DISCLOSED THE FIDUCIARY CAPACITY.

B. A TRUSTEE IS PERSONALLY LIABLE FOR TORTS COMMITTED IN THE COURSE OF ADMINISTERING A TRUST OR FOR OBLIGATIONS ARISING FROM OWNERSHIP OR CONTROL OF TRUST PROPERTY, INCLUDING LIABILITY FOR VIOLATION OF ENVIRONMENTAL LAW, ONLY IF THE TRUSTEE IS PERSONALLY AT FAULT.

C. A CLAIM BASED ON A CONTRACT ENTERED INTO BY A TRUSTEE IN THE TRUSTEE'S FIDUCIARY CAPACITY, ON AN OBLIGATION ARISING FROM OWNERSHIP OR CONTROL OF TRUST PROPERTY OR ON A TORT COMMITTED IN THE COURSE OF ADMINISTERING A TRUST MAY BE ASSERTED IN A JUDICIAL PROCEEDING AGAINST THE TRUSTEE IN THE TRUSTEE'S FIDUCIARY CAPACITY, WHETHER OR NOT THE TRUSTEE IS PERSONALLY LIABLE FOR THE CLAIM.

14-11011. Interest as general partner

A. EXCEPT TO THE EXTENT THAT PERSONAL LIABILITY IS IMPOSED IN THE CONTRACT, A TRUSTEE WHO HOLDS AN INTEREST AS A GENERAL PARTNER IN A GENERAL OR LIMITED PARTNERSHIP IS NOT PERSONALLY LIABLE ON A CONTRACT ENTERED INTO BY THE PARTNERSHIP AFTER THE TRUST'S ACQUISITION OF THE INTEREST IF THE

1 FIDUCIARY CAPACITY WAS DISCLOSED IN THE CONTRACT OR IN A STATEMENT PREVIOUSLY
2 FILED PURSUANT TO THE UNIFORM PARTNERSHIP ACT OR THE UNIFORM LIMITED
3 PARTNERSHIP ACT.

4 B. A TRUSTEE WHO HOLDS AN INTEREST AS A GENERAL PARTNER IS NOT
5 PERSONALLY LIABLE FOR TORTS COMMITTED BY THE PARTNERSHIP OR FOR OBLIGATIONS
6 ARISING FROM OWNERSHIP OR CONTROL OF THE INTEREST UNLESS THE TRUSTEE IS
7 PERSONALLY AT FAULT.

8 14-11012. Protection of person dealing with trustee

9 A. A PERSON OTHER THAN A BENEFICIARY WHO IN GOOD FAITH ASSISTS A
10 TRUSTEE OR WHO IN GOOD FAITH AND FOR VALUE DEALS WITH A TRUSTEE, WITHOUT
11 KNOWLEDGE THAT THE TRUSTEE IS EXCEEDING OR IMPROPERLY EXERCISING THE
12 TRUSTEE'S POWERS, IS PROTECTED FROM LIABILITY AS IF THE TRUSTEE PROPERLY
13 EXERCISED THE POWER.

14 B. A PERSON OTHER THAN A BENEFICIARY WHO IN GOOD FAITH DEALS WITH A
15 TRUSTEE IS NOT REQUIRED TO INQUIRE INTO THE EXTENT OF THE TRUSTEE'S POWERS OR
16 THE PROPRIETY OF THEIR EXERCISE.

17 C. A PERSON WHO IN GOOD FAITH DELIVERS ASSETS TO A TRUSTEE NEED NOT
18 ENSURE THEIR PROPER APPLICATION.

19 D. A PERSON OTHER THAN A BENEFICIARY WHO IN GOOD FAITH ASSISTS A
20 FORMER TRUSTEE OR WHO IN GOOD FAITH AND FOR VALUE DEALS WITH A FORMER
21 TRUSTEE, WITHOUT KNOWLEDGE THAT THE TRUSTEESHIP HAS TERMINATED, IS PROTECTED
22 FROM LIABILITY AS IF THE FORMER TRUSTEE WERE STILL A TRUSTEE.

23 E. COMPARABLE PROTECTIVE PROVISIONS OF OTHER LAWS RELATING TO
24 COMMERCIAL TRANSACTIONS OR TRANSFER OF SECURITIES BY FIDUCIARIES PREVAIL OVER
25 THE PROTECTION PROVIDED BY THIS SECTION.

26 14-11013. Certification of trust

27 A. INSTEAD OF FURNISHING A COPY OF THE TRUST INSTRUMENT TO A PERSON
28 OTHER THAN A BENEFICIARY, THE TRUSTEE MAY FURNISH TO THE PERSON A
29 CERTIFICATION OF TRUST CONTAINING THE FOLLOWING INFORMATION:

30 1. THAT THE TRUST EXISTS AND THE DATE THE TRUST INSTRUMENT WAS
31 EXECUTED.

32 2. THE IDENTITY OF THE SETTLOR.

33 3. THE IDENTITY AND ADDRESS OF THE CURRENTLY ACTING TRUSTEE.

34 4. THE POWERS OF THE TRUSTEE.

35 5. THE REVOCABILITY OR IRREVOCABILITY OF THE TRUST AND THE IDENTITY OF
36 ANY PERSON HOLDING A POWER TO REVOKE THE TRUST.

37 6. THE AUTHORITY OF COTRUSTEES TO SIGN OR OTHERWISE AUTHENTICATE AND
38 WHETHER ALL OR LESS THAN ALL ARE REQUIRED IN ORDER TO EXERCISE POWERS OF THE
39 TRUSTEE.

40 7. THE MANNER OF TAKING TITLE TO TRUST PROPERTY.

41 B. A CERTIFICATION OF TRUST MAY BE SIGNED OR OTHERWISE AUTHENTICATED
42 BY ANY TRUSTEE.

43 C. A CERTIFICATION OF TRUST MUST STATE THAT THE TRUST HAS NOT BEEN
44 REVOKED, MODIFIED OR AMENDED IN ANY MANNER THAT WOULD CAUSE THE
45 REPRESENTATIONS CONTAINED IN THE CERTIFICATION OF TRUST TO BE INCORRECT.

1 D. A CERTIFICATION OF TRUST NEED NOT CONTAIN THE DISPOSITIVE TERMS OF
2 A TRUST.

3 E. A RECIPIENT OF A CERTIFICATION OF TRUST MAY REQUIRE THE TRUSTEE TO
4 FURNISH COPIES OF THOSE EXCERPTS FROM THE ORIGINAL TRUST INSTRUMENT AND LATER
5 AMENDMENTS THAT DESIGNATE THE TRUSTEE AND CONFER ON THE TRUSTEE THE POWER TO
6 ACT IN THE PENDING TRANSACTION.

7 F. A PERSON WHO ACTS IN RELIANCE ON A CERTIFICATION OF TRUST WITHOUT
8 KNOWLEDGE THAT THE REPRESENTATIONS CONTAINED IN THE CERTIFICATION ARE
9 INCORRECT IS NOT LIABLE TO ANY PERSON FOR SO ACTING AND MAY ASSUME WITHOUT
10 INQUIRY THE EXISTENCE OF THE FACTS CONTAINED IN THE CERTIFICATION. KNOWLEDGE
11 OF THE TERMS OF THE TRUST MAY NOT BE INFERRED SOLELY FROM THE FACT THAT A
12 COPY OF ALL OR PART OF THE TRUST INSTRUMENT IS HELD BY THE PERSON RELYING ON
13 THE CERTIFICATION.

14 G. A PERSON WHO IN GOOD FAITH ENTERS INTO A TRANSACTION IN RELIANCE ON
15 A CERTIFICATION OF TRUST MAY ENFORCE THE TRANSACTION AGAINST THE TRUST
16 PROPERTY AS IF THE REPRESENTATIONS CONTAINED IN THE CERTIFICATION WERE
17 CORRECT.

18 H. A PERSON MAKING A DEMAND FOR THE TRUST INSTRUMENT IN ADDITION TO A
19 CERTIFICATION OF TRUST OR EXCERPTS IS LIABLE FOR DAMAGES IF THE COURT
20 DETERMINES THAT THE PERSON DID NOT ACT IN GOOD FAITH IN DEMANDING THE TRUST
21 INSTRUMENT.

22 I. THIS SECTION DOES NOT LIMIT THE RIGHT OF A PERSON TO OBTAIN A COPY
23 OF THE TRUST INSTRUMENT IN A JUDICIAL PROCEEDING CONCERNING THE TRUST.

24 14-11014. Total return trusts; definitions

25 A. A TRUSTEE, OTHER THAN AN INTERESTED TRUSTEE, OR IF TWO OR MORE
26 PERSONS ARE ACTING AS TRUSTEE, A MAJORITY OF THE TRUSTEES WHO ARE NOT AN
27 INTERESTED TRUSTEE, IN ITS SOLE DISCRETION AND WITHOUT THE APPROVAL OF THE
28 PROBATE COURT MAY:

29 1. CONVERT AN INCOME TRUST TO A TOTAL RETURN UNITRUST.

30 2. RECONVERT A TOTAL RETURN UNITRUST TO AN INCOME TRUST.

31 3. CHANGE THE PERCENTAGE USED TO CALCULATE THE UNITRUST AMOUNT OR THE
32 METHOD USED TO DETERMINE THE FAIR MARKET VALUE OF THE TRUST, OR BOTH, IF:

33 (a) THE TRUSTEE ADOPTS A WRITTEN POLICY FOR THE TRUST PROVIDING
34 EITHER:

35 (i) IN THE CASE OF A TRUST BEING ADMINISTERED AS AN INCOME TRUST,
36 FUTURE DISTRIBUTIONS FROM THE TRUST WILL BE UNITRUST AMOUNTS RATHER THAN NET
37 INCOME.

38 (ii) IN THE CASE OF A TRUST BEING ADMINISTERED AS A TOTAL RETURN
39 UNITRUST, FUTURE DISTRIBUTIONS FROM THE TRUST WILL BE NET INCOME RATHER THAN
40 UNITRUST AMOUNTS.

41 (iii) THAT THE PERCENTAGE USED TO CALCULATE THE UNITRUST AMOUNT OR THE
42 METHOD USED TO DETERMINE THE FAIR MARKET VALUE OF THE TRUST, OR BOTH, WILL BE
43 CHANGED AS STATED IN THE POLICY.

44 (b) THE TRUSTEE SENDS WRITTEN NOTICE OF ITS INTENTION TO TAKE THIS
45 ACTION, ALONG WITH COPIES OF THE WRITTEN POLICY AND THIS SECTION, TO:

1 (i) THE SETTLOR OF THE TRUST, IF LIVING.

2 (ii) ALL LIVING PERSONS WHO ARE CURRENTLY RECEIVING OR ELIGIBLE TO
3 RECEIVE DISTRIBUTIONS OF INCOME OF THE TRUST.

4 (iii) WITHOUT REGARD TO THE EXERCISE OF ANY POWER OF APPOINTMENT, ALL
5 LIVING PERSONS WHO WOULD RECEIVE PRINCIPAL OF THE TRUST IF THE TRUST WERE TO
6 TERMINATE AT THE TIME OF THE GIVING OF THE NOTICE AND ALL LIVING PERSONS WHO
7 WOULD RECEIVE OR BE ELIGIBLE TO RECEIVE DISTRIBUTIONS OF INCOME OR PRINCIPAL
8 OF THE TRUST IF THE INTERESTS OF ALL OF THE BENEFICIARIES CURRENTLY ELIGIBLE
9 TO RECEIVE INCOME UNDER ITEM (ii) OF THIS SUBDIVISION WERE TO TERMINATE AT
10 THE TIME OF THE GIVING OF THE NOTICE.

11 (iv) ALL PERSONS ACTING AS ADVISER OR TRUST PROTECTOR OF THE TRUST.

12 (c) AT LEAST ONE PERSON RECEIVING NOTICE UNDER SUBDIVISION (b), ITEM
13 (ii) OR (iii) OF THIS SUBSECTION IS LEGALLY COMPETENT.

14 (d) NO PERSON RECEIVING NOTICE OBJECTS TO THE PROPOSED ACTION OF THE
15 TRUSTEE BY SUBMITTING A WRITTEN INSTRUMENT DELIVERED TO THE TRUSTEE WITHIN
16 THIRTY DAYS AFTER RECEIPT OF THE NOTICE.

17 B. IF THERE IS NO TRUSTEE OF THE TRUST OTHER THAN AN INTERESTED
18 TRUSTEE, THE INTERESTED TRUSTEE OR, IF TWO OR MORE PERSONS ARE ACTING AS
19 TRUSTEE AND ARE INTERESTED TRUSTEES, A MAJORITY OF INTERESTED TRUSTEES, IN
20 ITS SOLE DISCRETION AND WITHOUT THE APPROVAL OF THE PROBATE COURT MAY:

21 1. CONVERT AN INCOME TRUST TO A TOTAL RETURN UNITRUST.

22 2. RECONVERT A TOTAL RETURN UNITRUST TO AN INCOME TRUST.

23 3. CHANGE THE PERCENTAGE USED TO CALCULATE THE UNITRUST AMOUNT OR THE
24 METHOD USED TO DETERMINE THE FAIR MARKET VALUE OF THE TRUST, OR BOTH, IF:

25 (a) THE TRUSTEE ADOPTS A WRITTEN POLICY FOR THE TRUST PROVIDING
26 EITHER:

27 (i) IN THE CASE OF A TRUST BEING ADMINISTERED AS AN INCOME TRUST, THAT
28 FUTURE DISTRIBUTIONS FROM THE TRUST WILL BE UNITRUST AMOUNTS RATHER THAN NET
29 INCOME.

30 (ii) IN THE CASE OF A TRUST BEING ADMINISTERED AS A TOTAL RETURN
31 UNITRUST, THAT FUTURE DISTRIBUTIONS FROM THE TRUST WILL BE NET INCOME RATHER
32 THAN UNITRUST AMOUNTS.

33 (iii) THAT THE PERCENTAGE USED TO CALCULATE THE UNITRUST AMOUNT OR THE
34 METHOD USED TO DETERMINE THE FAIR MARKET VALUE OF THE TRUST, OR BOTH, WILL BE
35 CHANGED AS STATED IN THE POLICY.

36 (b) THE TRUSTEE APPOINTS A DISINTERESTED PERSON WHO, IN ITS SOLE
37 DISCRETION BUT ACTING IN A FIDUCIARY CAPACITY, DETERMINES FOR THE TRUSTEE:

38 (i) THE PERCENTAGE TO BE USED TO CALCULATE THE UNITRUST AMOUNT.

39 (ii) THE METHOD TO BE USED IN DETERMINING THE FAIR MARKET VALUE OF THE
40 TRUST.

41 (iii) WHICH ASSETS, IF ANY, ARE TO BE EXCLUDED IN DETERMINING THE
42 UNITRUST AMOUNT.

43 (c) THE TRUSTEE SENDS WRITTEN NOTICE OF ITS INTENTION TO TAKE SUCH
44 ACTION, ALONG WITH COPIES OF THE WRITTEN POLICY AND THIS SECTION, AND THE
45 DETERMINATIONS OF THE DISINTERESTED PERSON TO:

1 (i) THE SETTLOR OF THE TRUST, IF LIVING.

2 (ii) ALL LIVING PERSONS WHO ARE CURRENTLY RECEIVING OR ELIGIBLE TO
3 RECEIVE DISTRIBUTIONS OF INCOME OF THE TRUST.

4 (iii) WITHOUT REGARD TO THE EXERCISE OF ANY POWER OF APPOINTMENT, ALL
5 LIVING PERSONS WHO WOULD RECEIVE PRINCIPAL OF THE TRUST IF THE TRUST WERE TO
6 TERMINATE AT THE TIME OF THE GIVING OF THE NOTICE AND ALL LIVING PERSONS WHO
7 WOULD RECEIVE OR BE ELIGIBLE TO RECEIVE DISTRIBUTIONS OF INCOME OR PRINCIPAL
8 OF THE TRUST IF THE INTERESTS OF ALL OF THE BENEFICIARIES CURRENTLY ELIGIBLE
9 TO RECEIVE INCOME UNDER ITEM (ii) OF THIS SUBDIVISION WERE TO TERMINATE AT
10 THE TIME OF THE GIVING OF THE NOTICE.

11 (iv) ALL PERSONS ACTING AS ADVISER OR PROTECTOR OF THE TRUST.

12 (d) AT LEAST ONE PERSON RECEIVING NOTICE UNDER SUBDIVISION (c), ITEM
13 (ii) OR (iii) OF THIS SUBSECTION IS LEGALLY COMPETENT.

14 (e) NO PERSON RECEIVING NOTICE OBJECTS TO THE PROPOSED ACTION OR THE
15 DETERMINATIONS OF THE DISINTERESTED PERSON BY SUBMITTING A WRITTEN INSTRUMENT
16 DELIVERED TO THE TRUSTEE WITHIN THIRTY DAYS AFTER RECEIPT OF THE NOTICE.

17 C. IF ANY TRUSTEE WISHES TO CONVERT AN INCOME TRUST TO A TOTAL RETURN
18 UNITRUST, RECONVERT A TOTAL RETURN UNITRUST TO AN INCOME TRUST OR CHANGE THE
19 PERCENTAGE USED TO CALCULATE THE UNITRUST AMOUNT OR THE METHOD USED TO
20 DETERMINE THE FAIR MARKET VALUE OF THE TRUST, OR BOTH, BUT DOES NOT HAVE THE
21 ABILITY TO OR ELECTS NOT TO DO IT PURSUANT TO SUBSECTION A OR B OF THIS
22 SECTION, THE TRUSTEE MAY PETITION THE PROBATE COURT FOR AN ORDER AS THE
23 TRUSTEE DEEMS APPROPRIATE. IF THERE IS ONLY ONE TRUSTEE OF SUCH A TRUST AND
24 THAT TRUSTEE IS AN INTERESTED TRUSTEE OR IF THERE ARE TWO OR MORE TRUSTEES OF
25 SUCH A TRUST AND A MAJORITY OF THEM ARE INTERESTED TRUSTEES, THE COURT, IN
26 ITS DISCRETION OR ON PETITION OF THE TRUSTEE OR TRUSTEES OR OF ANY PERSON
27 INTERESTED IN THE TRUST, MAY APPOINT A DISINTERESTED PERSON WHO, ACTING IN A
28 FIDUCIARY CAPACITY, SHALL PRESENT INFORMATION TO THE COURT NECESSARY TO
29 ENABLE THE COURT TO MAKE ITS DETERMINATIONS.

30 D. THE FAIR MARKET VALUE OF THE TRUST SHALL BE DETERMINED AT LEAST
31 ANNUALLY, USING A VALUATION DATE OR DATES OR AVERAGES OF VALUATION DATES AS
32 ARE DEEMED APPROPRIATE. ASSETS FOR WHICH A FAIR MARKET VALUE CANNOT BE
33 READILY ASCERTAINED SHALL BE VALUED USING VALUATION METHODS AS ARE DEEMED
34 REASONABLE AND APPROPRIATE. ASSETS USED BY A TRUST BENEFICIARY, SUCH AS A
35 RESIDENCE PROPERTY OR TANGIBLE PERSONAL PROPERTY, MAY BE EXCLUDED FROM FAIR
36 MARKET VALUE FOR COMPUTING THE UNITRUST AMOUNT.

37 E. THE PERCENTAGE TO BE USED IN DETERMINING THE UNITRUST AMOUNT SHALL
38 BE A REASONABLE CURRENT RETURN FROM THE TRUST, BUT NOT LESS THAN THREE PER
39 CENT OR MORE THAN FIVE PER CENT, TAKING INTO ACCOUNT THE INTENTIONS OF THE
40 SETTLOR OF THE TRUST AS EXPRESSED IN THE GOVERNING INSTRUMENT, THE NEEDS OF
41 THE BENEFICIARIES, GENERAL ECONOMIC CONDITIONS, PROJECTED CURRENT EARNINGS
42 AND APPRECIATION FOR THE TRUST, AND PROJECTED INFLATION AND ITS IMPACT ON THE
43 TRUST.

1 F. A TRUSTEE MAY ACT PURSUANT TO SUBSECTION A OR B OF THIS SECTION
2 WITH RESPECT TO A TRUST FOR WHICH BOTH INCOME AND PRINCIPAL HAVE BEEN
3 PERMANENTLY SET ASIDE FOR CHARITABLE PURPOSES UNDER THE GOVERNING INSTRUMENT
4 AND FOR WHICH A FEDERAL ESTATE OR GIFT TAX DEDUCTION HAS BEEN TAKEN, PROVIDED
5 THAT:

6 1. INSTEAD OF SENDING WRITTEN NOTICE TO THE PERSONS DESCRIBED IN
7 SUBSECTION A, PARAGRAPH 3, SUBDIVISION (b), ITEMS (ii) AND (iii) OF THIS
8 SECTION OR PURSUANT TO SUBSECTION B, PARAGRAPH 3, SUBDIVISION (c), ITEMS (ii)
9 AND (iii) OF THIS SECTION, AS THE CASE MAY BE, THE TRUSTEE SHALL SEND THE
10 WRITTEN NOTICE TO THE NAMED CHARITY OR CHARITIES THEN ENTITLED TO RECEIVE
11 INCOME OF THE TRUST AND, IF NO NAMED CHARITY OR CHARITIES ARE ENTITLED TO
12 RECEIVE ALL OF THAT INCOME, TO THE ATTORNEY GENERAL OF THIS STATE.

13 2. SUBSECTION A, PARAGRAPH 3, SUBDIVISION (c) OF THIS SECTION OR
14 SUBSECTION B, PARAGRAPH 3, SUBDIVISION (d) OF THIS SECTION, AS THE CASE MAY
15 BE, DOES NOT APPLY TO THAT ACTION.

16 3. IN EACH TAXABLE YEAR, THE TRUSTEE MUST DISTRIBUTE THE GREATER OF
17 THE UNITRUST AMOUNT AND THE AMOUNT REQUIRED BY SECTION 4942 OF THE INTERNAL
18 REVENUE CODE.

19 G. FOLLOWING THE CONVERSION OF AN INCOME TRUST TO A TOTAL RETURN
20 UNITRUST, THE TRUSTEE:

21 1. SHALL CONSIDER THE UNITRUST AMOUNT AS PAID FROM NET ACCOUNTING
22 INCOME DETERMINED AS IF THE TRUST WERE NOT A UNITRUST.

23 2. SHALL THEN CONSIDER THE UNITRUST AMOUNT AS PAID FROM ORDINARY
24 INCOME NOT ALLOCABLE TO NET ACCOUNTING INCOME.

25 3. AFTER CALCULATING THE TRUST'S CAPITAL GAIN NET INCOME DESCRIBED IN
26 SECTION 1222(9) OF THE INTERNAL REVENUE CODE, MAY CONSIDER THE UNITRUST
27 AMOUNT AS PAID FROM NET SHORT-TERM CAPITAL GAIN DESCRIBED IN SECTION 1222(5)
28 OF THE INTERNAL REVENUE CODE AND THEN FROM NET LONG-TERM CAPITAL GAIN
29 DESCRIBED IN SECTION 1222(7) OF THE INTERNAL REVENUE CODE.

30 4. SHALL THEN CONSIDER THE UNITRUST AMOUNT AS COMING FROM THE
31 PRINCIPAL OF THE TRUST.

32 H. IN ADMINISTERING A TOTAL RETURN UNITRUST, THE TRUSTEE, IN ITS SOLE
33 DISCRETION BUT SUBJECT TO THE PROVISIONS OF THE GOVERNING INSTRUMENT, MAY
34 DETERMINE:

35 1. THE EFFECTIVE DATE OF THE CONVERSION.

36 2. THE TIMING OF DISTRIBUTIONS, INCLUDING PROVISIONS FOR PRORATING A
37 DISTRIBUTION FOR A SHORT YEAR IN WHICH A BENEFICIARY'S RIGHT TO PAYMENTS
38 COMMENCES OR CEASES.

39 3. WHETHER DISTRIBUTIONS ARE TO BE MADE IN CASH OR IN KIND OR PARTLY
40 IN CASH AND PARTLY IN KIND.

41 4. IF THE TRUST IS RECONVERTED TO AN INCOME TRUST, THE EFFECTIVE DATE
42 OF THE RECONVERSION.

43 5. ANY OTHER ADMINISTRATIVE ISSUES AS MAY BE NECESSARY OR APPROPRIATE
44 TO CARRY OUT THE PURPOSES OF THIS SECTION.

1 I. CONVERSION TO A TOTAL RETURN UNITRUST UNDER THIS SECTION DOES NOT
2 AFFECT ANY OTHER PROVISION OF THE GOVERNING INSTRUMENT, IF ANY, REGARDING
3 DISTRIBUTIONS OF PRINCIPAL.

4 J. NOTWITHSTANDING ANYTHING IN THIS SECTION TO THE CONTRARY, IN THE
5 CASE OF A TRUST FOR WHICH A MARITAL DEDUCTION HAS BEEN TAKEN FOR FEDERAL TAX
6 PURPOSES UNDER SECTION 2056 OR 2523 OF THE INTERNAL REVENUE CODE, THE SPOUSE
7 OTHERWISE ENTITLED TO RECEIVE THE NET INCOME OF THE TRUST HAS THE RIGHT, BY
8 WRITTEN INSTRUMENT DELIVERED TO THE TRUSTEE, TO PROHIBIT CONVERSION TO A
9 TOTAL RETURN UNITRUST AND TO COMPEL THE RECONVERSION DURING THAT SPOUSE'S
10 LIFETIME OF THE TRUST FROM A TOTAL RETURN UNITRUST TO AN INCOME TRUST.

11 K. THIS SECTION PERTAINS TO THE ADMINISTRATION OF A TRUST AND IS
12 AVAILABLE TO ANY TRUST THAT IS ADMINISTERED IN THIS STATE UNDER ARIZONA LAW
13 OR TO ANY TRUST, REGARDLESS OF ITS PLACE OF ADMINISTRATION, WHOSE GOVERNING
14 INSTRUMENT PROVIDES THAT ARIZONA LAW GOVERNS MATTERS OF CONSTRUCTION OR
15 ADMINISTRATION UNLESS:

16 1. THE GOVERNING INSTRUMENT REFLECTS AN INTENTION THAT THE CURRENT
17 BENEFICIARY OR BENEFICIARIES ARE TO RECEIVE AN AMOUNT OTHER THAN A REASONABLE
18 CURRENT RETURN FROM THE TRUST.

19 2. THE TRUST IS A POOLED INCOME FUND DESCRIBED IN SECTION 642(c)(5) OF
20 THE INTERNAL REVENUE CODE OR A CHARITABLE-REMAINDER TRUST DESCRIBED IN
21 SECTION 664(d) OF THE INTERNAL REVENUE CODE.

22 3. THE GOVERNING INSTRUMENT EXPRESSLY PROHIBITS USE OF THIS SECTION BY
23 SPECIFIC REFERENCE TO THIS SECTION OR EXPRESSLY STATES THE SETTLOR'S INTENT
24 THAT NET INCOME NOT BE CALCULATED AS A UNITRUST AMOUNT. A PROVISION IN THE
25 GOVERNING INSTRUMENT THAT "THE PROVISIONS OF ARIZONA REVISED STATUTES,
26 SECTION 14-11014, AS AMENDED, OR ANY CORRESPONDING PROVISION OF FUTURE LAW,
27 SHALL NOT BE USED IN THE ADMINISTRATION OF THIS TRUST" OR "MY TRUSTEE SHALL
28 NOT DETERMINE THE DISTRIBUTIONS TO THE INCOME BENEFICIARY AS A UNITRUST
29 AMOUNT" OR SIMILAR WORDS REFLECTING SUCH INTENT SHALL BE SUFFICIENT TO
30 PRECLUDE THE USE OF THIS SECTION.

31 L. ANY TRUSTEE OR DISINTERESTED PERSON WHO IN GOOD FAITH TAKES OR
32 FAILS TO TAKE ANY ACTION UNDER THIS SECTION IS NOT LIABLE TO ANY PERSON
33 AFFECTED BY THAT ACTION OR INACTION, REGARDLESS OF WHETHER THE PERSON
34 RECEIVED WRITTEN NOTICE AS PRESCRIBED IN THIS SECTION AND REGARDLESS OF
35 WHETHER THE PERSON WAS UNDER A LEGAL DISABILITY AT THE TIME OF THE DELIVERY
36 OF THE NOTICE. THE PERSON'S EXCLUSIVE REMEDY IS TO OBTAIN A COURT ORDER
37 DIRECTING THE TRUSTEE TO CONVERT AN INCOME TRUST TO A TOTAL RETURN UNITRUST,
38 TO RECONVERT FROM A TOTAL RETURN UNITRUST TO AN INCOME TRUST OR TO CHANGE THE
39 PERCENTAGE USED TO CALCULATE THE UNITRUST AMOUNT.

40 M. THIS SECTION IS AVAILABLE TO TRUSTS IN EXISTENCE ON OCTOBER 1, 2008
41 OR CREATED AFTER THAT DATE.

42 N. FOR THE PURPOSES OF THIS SECTION:

43 1. "DISINTERESTED PERSON" MEANS A PERSON WHO IS NOT A RELATED OR
44 SUBORDINATE PARTY PURSUANT TO SECTION 672(c) OF THE INTERNAL REVENUE CODE

1 WITH RESPECT TO THE PERSON THEN ACTING AS TRUSTEE OF THE TRUST AND EXCLUDES
2 THE SETTLOR OF THE TRUST AND ANY INTERESTED TRUSTEE.

3 2. "INCOME TRUST" MEANS A TRUST THAT IS CREATED BY EITHER AN INTER
4 VIVOS OR A TESTAMENTARY INSTRUMENT AND THAT DIRECTS OR PERMITS THE TRUSTEE TO
5 DISTRIBUTE THE NET INCOME OF THE TRUST TO ONE OR MORE PERSONS, EITHER IN
6 REQUIRED AMOUNTS OR PROPORTIONS, OR IN AMOUNTS OR PROPORTIONS DETERMINED BY
7 THE TRUSTEE AND REGARDLESS OF WHETHER THE TRUST DIRECTS OR PERMITS THE
8 TRUSTEE TO DISTRIBUTE THE PRINCIPAL OF THE TRUST TO ONE OR MORE OF THESE
9 PERSONS.

10 3. "INTERESTED DISTRIBUTE" MEANS A PERSON TO WHOM DISTRIBUTIONS OF
11 INCOME OR PRINCIPAL CAN CURRENTLY BE MADE WHO HAS THE POWER TO REMOVE THE
12 EXISTING TRUSTEE AND DESIGNATE AS SUCCESSOR A PERSON WHO MAY BE A RELATED OR
13 SUBORDINATE PARTY PURSUANT TO SECTION 672(c) OF THE INTERNAL REVENUE CODE
14 WITH RESPECT TO THAT DISTRIBUTE.

15 4. "INTERESTED TRUSTEE" MEANS:

16 (a) AN INDIVIDUAL TRUSTEE TO WHOM THE NET INCOME OR PRINCIPAL OF THE
17 TRUST CAN CURRENTLY BE DISTRIBUTED OR WOULD BE DISTRIBUTED IF THE TRUST WERE
18 THEN TO TERMINATE AND BE DISTRIBUTED.

19 (b) ANY TRUSTEE WHO MAY BE REMOVED AND REPLACED BY AN INTERESTED
20 DISTRIBUTE.

21 (c) AN INDIVIDUAL TRUSTEE WHOSE LEGAL OBLIGATION TO SUPPORT A
22 BENEFICIARY MAY BE SATISFIED BY DISTRIBUTIONS OF INCOME AND PRINCIPAL OF THE
23 TRUST.

24 5. "TOTAL RETURN UNITRUST" MEANS AN INCOME TRUST THAT HAS BEEN
25 CONVERTED UNDER AND MEETS THE REQUIREMENTS OF THIS SECTION.

26 6. "TRUSTEE" MEANS ANY PERSON ACTING AS TRUSTEE OF THE TRUST, UNLESS
27 EXPRESSLY NOTED OTHERWISE, WHETHER ACTING IN THAT PERSON'S DISCRETION OR ON
28 THE DIRECTION OF ONE OR MORE PERSONS ACTING IN A FIDUCIARY CAPACITY.

29 7. "UNITRUST AMOUNT" MEANS AN AMOUNT COMPUTED AS A PERCENTAGE OF THE
30 FAIR MARKET VALUE OF THE TRUST.

31 ARTICLE 11. MISCELLANEOUS PROVISIONS

32 14-11101. Electronic records and signatures

33 THE PROVISIONS OF THIS CHAPTER GOVERNING THE LEGAL EFFECT, VALIDITY OR
34 ENFORCEABILITY OF ELECTRONIC RECORDS OR ELECTRONIC SIGNATURES, AND OF
35 CONTRACTS FORMED OR PERFORMED WITH THE USE OF SUCH RECORDS OR SIGNATURES,
36 CONFORM TO THE REQUIREMENTS OF SECTION 102 OF THE ELECTRONIC SIGNATURES IN
37 GLOBAL AND NATIONAL COMMERCE ACT (15 UNITED STATES CODE SECTION 7002) AND
38 SUPERSEDE, MODIFY AND LIMIT THE REQUIREMENTS OF THAT ACT.

39 14-11102. Severability clause

40 IF ANY PROVISION OF THIS CHAPTER OR ITS APPLICATION TO ANY PERSON OR
41 CIRCUMSTANCES IS HELD INVALID, THE INVALIDITY DOES NOT AFFECT OTHER
42 PROVISIONS OR APPLICATIONS OF THIS CHAPTER THAT CAN BE GIVEN EFFECT WITHOUT
43 THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS
44 CHAPTER ARE SEVERABLE.

1 Sec. 17. Section 46-456, Arizona Revised Statutes, is amended to read:

2 46-456. Duty to an incapacitated or vulnerable adult; financial
3 exploitation; civil and criminal penalties;
4 exceptions; definitions

5 A. A person who is in a position of trust and confidence to an
6 incapacitated or vulnerable adult shall act for the benefit of that person to
7 the same extent as a trustee pursuant to title 14, chapter 7, ~~article 3~~.

8 B. A person who is in a position of trust and confidence and who by
9 intimidation or deception knowingly takes control, title, use or management
10 of an incapacitated or vulnerable adult's asset or property with the intent
11 to permanently deprive that person of the asset or property is guilty of
12 theft as provided in section 13-1802.

13 C. A person who violates subsection A or B of this section is subject
14 to damages in a civil action brought by or on behalf of an incapacitated or
15 vulnerable adult that equal up to three times the amount of the monetary
16 damages.

17 D. A person who violates subsection A or B of this section forfeits
18 all benefits with respect to the estate of the deceased, incapacitated or
19 vulnerable adult, including an intestate share, an elective share, an omitted
20 spouse's share, an omitted child's share, a homestead allowance, an exempt
21 property allowance and a family allowance. If the incapacitated or
22 vulnerable adult died intestate, the decedent's intestate estate passes as if
23 the person who committed the violation disclaimed that person's intestate
24 share.

25 E. ~~The provisions of~~ Section 46-455, subsections F, G, H, I, K, L, M
26 and P also apply to civil violations of this section.

27 F. Subsections A, C, D and E of this section do not apply to an agent
28 that is any of the following:

29 1. A bank, financial institution or escrow agent licensed or certified
30 pursuant to title 6.

31 2. A securities dealer or salesman registered pursuant to title 44,
32 chapter 12, article 9.

33 3. An insurer, including a title insurer, authorized and regulated
34 pursuant to title 20.

35 G. For the purposes of this section:

36 1. "Deception" means that a person deceives an incapacitated or
37 vulnerable adult by knowingly doing any of the following:

38 (a) Creating or confirming a false impression in an incapacitated or
39 vulnerable adult's mind.

40 (b) Failing to correct a false impression that the person is
41 responsible for creating or confirming in an incapacitated or vulnerable
42 adult's mind.

43 (c) Making a promise to an incapacitated or vulnerable adult that the
44 person does not intend to perform or that the person knows will not or cannot

1 be performed. A person's failure to perform a promise is not by itself
2 sufficient proof that the person did not intend to perform the promise.

3 (d) Misrepresenting or concealing a material fact that relates to the
4 terms of a contract or an agreement that the person enters into with the
5 incapacitated or vulnerable adult or that relates to the existing or
6 preexisting condition of any of the property involved in a contract or an
7 agreement.

8 (e) Using any material misrepresentation, false pretense or false
9 promise to induce, encourage or solicit an incapacitated or vulnerable adult
10 to enter into a contract or an agreement.

11 2. "Intimidation" includes threatening to deprive an incapacitated or
12 vulnerable adult of food, nutrition, shelter or necessary medication or
13 medical treatment.

14 3. "Position of trust and confidence" means that a person is any of
15 the following:

16 (a) One who has assumed a duty to provide care to the incapacitated or
17 vulnerable adult.

18 (b) A joint tenant or a tenant in common with an incapacitated or
19 vulnerable adult.

20 (c) One who is in a fiduciary relationship with an incapacitated or
21 vulnerable adult including a de facto guardian or de facto conservator.

22 Sec. 18. Application to existing relationships

23 A. Except as otherwise provided in this act, beginning on January 1,
24 2009:

25 1. This act applies to all trusts created before, on or after January
26 1, 2009.

27 2. This act applies to all judicial proceedings concerning trusts
28 commenced on or after January 1, 2009.

29 3. This act applies to judicial proceedings concerning trusts
30 commenced before January 1, 2009, unless the court finds that application of
31 a particular provision of this act would substantially interfere with the
32 effective conduct of the judicial proceedings or prejudice the rights of the
33 parties, in which case the particular provision of this act does not apply
34 and the superseded law applies.

35 4. Any rule of construction or presumption provided in this act
36 applies to trust instruments executed before January 1, 2009, unless there is
37 a clear indication of a contrary intent in the terms of the trust.

38 5. An act done before January 1, 2009 is not affected by this act.

39 B. If a right is acquired, extinguished or barred on the expiration of
40 a prescribed period that has commenced to run under any other statute before
41 January 1, 2009, that statute continues to apply to the right even if it has
42 been repealed or superseded.

43 Sec. 19. Effective date

44 This act is effective from and after December 31, 2008.

APPROVED BY THE GOVERNOR MAY 27, 2008.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 27, 2008.